

Government of West Bengal
Judicial and Legislative (Legislative) Department

Supplement to the Bengal Code

Bengal Acts 1939 to 1947
West Bengal Acts 1947 to 1948

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PREFACE.

This Supplement contains the following enactments—

- (1) Bengal Acts, 1939 to 1947, and
- (2) West Bengal Acts, 1947 and 1948,

which are in force in the Province of West Bengal, or in any part of that Province, with the exception of certain enactments which have been omitted from this publication because they—

- (a) are of purely private character, or
- (b) are spent or obsolete, or
- (c) are purely amending Acts, other than Acts amending Central Acts which have not been printed in this publication.

The enactments contained in this publication are printed as modified up to the 31st December, 1948.

2. The following changes have been made in reprinting the enactments contained in this publication:—

- (1) The adaptations made by the India (Adaptation of existing Indian Laws) Order, 1947 have been included.
- (2) The adaptations made by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, have been included.
- (3) Over the title of each enactment the date on which it became law has been noted in brackets, as in the latest edition of the Statutes revised.
- (4) The headings to the pages have been amplified.
- (5) Repealed matter has been omitted, explanatory notes being inserted.
- (6) Amendments have been inserted in their proper places, with explanatory foot-notes.
- (7) A table of contents has in several cases been added.

3. My acknowledgments are due to Sri Naresh Chandra Chatterjee, Head Assistant of the West Bengal Legislative Department, who has compiled this publication and has rendered valuable service in this connection.

4. Correction slips will be issued to keep this work corrected to date in accordance with current legislation.

5. Communications respecting this work may be addressed to the Legislative Department of the Government of West Bengal.

K. K. HAJARA,

*Secretary to the Government of
West Bengal, Judicial and
Legislative (Legislative) Department.*

CALCUTTA:

The 2nd May, 1949.

**CHRONOLOGICAL TABLE OF ENACTMENTS PRINTED
IN THIS SUPPLEMENT.**

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1940	XIX ..	<i>The Bengal Legislature (Removal of Disqualifications Amendment) Act, 1940.</i>	..	<i>Spent.</i>
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1943	I ..	<i>The Calcutta and Suburban Police (Amendment) Act, 1943.</i>	..	<i>Repealed by West Bengal Act VII of 1948.</i>
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Bengal Act IV of 1939.¹

THE BENGAL MATERNITY BENEFIT ACT, 1939.

[20th April, 1939.]

An Act to regulate the employment of women in factories for certain periods before and after childbirth and to provide for the payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in factories for certain periods before and after childbirth and to provide for the payment of maternity benefit to them;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Maternity Benefit Act, 1939. Short title, extent and commencement.

(2) It extends to the whole of '[West Bengal].'

(3) It shall come into force on such date² as the Provincial Government may, by notification in the *Official Gazette*, direct.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) "child" includes a still-born child;

(b) "employer" includes the occupier of a factory and the manager of a factory;

XXV of
1934.

(c) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934, and includes a place declared to be a factory under sub-section (1) of section 5 of that Act, but does not include a seasonal factory;

(d) "maternity benefit" means the sum of money payable under the provisions of this Act to a woman employed in a factory;

(e) "medical practitioner" means a medical practitioner nominated for the purposes of this Act by the employer with the approval of the Inspector of Factories;

IV of 1936.

(f) "wages" means wages as defined in clause (vi) of section 2 of the Payment of Wages Act, 1936;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 19th August, 1937, Part IVA, page 6;

the Report of the Select Committee was presented to the Bengal Legislative Assembly on the 29th July, 1938;

for proceedings in the Bengal Legislative Assembly, see the Bengal Legislative Assembly proceedings of the 30th September, 1937, 16th February, 29th July and 19th and 22nd August, 1938.

²The words within square brackets were substituted for the word "Bengal" by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act was brought into force on the 1st January, 1940, vide notification No. 3248Com., dated the 30th October, 1939, published at page 2784 of the *Calcutta Gazette* of the 2nd November, 1939.

The Act came into force in Darjeeling and partially excluded areas of Mymensingh District on the 1st January, 1940, vide Notification No. 3249Com., dated the 30th October, 1939, at page 2784 of the *Calcutta Gazette*, dated the 2nd November, 1939.

The Bengal Maternity Benefit Act, 1939.

[Ben. Act IV

(Sections 3—5.)

(g) "woman" means a woman worker; and

(h) expressions used, but not defined in this Act, have the same meanings as in the Factories Act, 1934.

XXV of
1934.

Employ-
ment of,
or work by,
women in
factories
prohibited
during
certain
period.

3. After this Act comes into force—

(1) no employer shall knowingly employ a woman in any factory during the four weeks immediately following the day of her delivery; and

(2) no woman shall work in any factory during the four weeks immediately following the day of her delivery.

Right to
and liabi-
lity for
payment of
maternity
benefit.

4. (1) Subject to the provisions of this Act, every woman employed in a factory shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of her average daily earnings calculated to the nearest quarter of an anna in the manner provided in sub-section (2) or at the rate of eight annas a day, whichever is greater for the actual days of her absence, which shall include holidays and non-working days, during the period of four weeks immediately preceding and including the day of her delivery and for the four weeks immediately following that day:

Provided that a woman shall not be entitled to maternity benefit unless she has been employed in the factory of the employer from whom she claims maternity benefit for a period of not less than nine months immediately preceding the day of her delivery.

(2) The average daily earnings referred to in sub-section (1) shall be calculated by dividing the total wages earned by the woman during the three months immediately preceding the date on which she gives notice under sub-section (1) of section 5 by the actual number of days on which she worked during that period.

Procedure
regarding
payment of
maternity
benefit.

5. (1) Any woman entitled to maternity benefit under the provisions of this Act,—

(a) who is pregnant may, on any day, give notice either orally in person or in writing in the form prescribed by rules made under this Act to the manager of the factory that she expects to be confined within one month next following and may therein nominate a person for purposes of section 6;

(b) who has not given the notice referred to in clause (a) and has been delivered of a child, shall, within seven days, give similar notice that she has given birth to a child.

(2) When such notice is received, the employer shall permit the woman to absent herself from the factory from the day following the date of notice in the case mentioned in clause (a) of sub-section (1) and from the day of delivery in the case mentioned in clause (b) thereof, until four weeks after the day of delivery.

The Bengal Maternity Benefit Act, 1939.

of 1939.]

(Section 6.)

(3) An employer shall pay maternity benefit to a woman entitled thereto in such one of the following ways as the woman desires, namely:—

- (i) for four weeks, within forty-eight hours of the production of a certificate signed by a medical practitioner stating that the woman is expected to be confined within one month of the date of the certificate, and for the remainder of the period for which she is entitled to maternity benefit under sub-section (1) of section 4, within forty-eight hours of the production of proof that she has given birth to a child; or
- (ii) for the said period up to and including the day of delivery, within forty-eight hours of the production of proof that she has given birth to a child, and for the remainder of the said period, within four weeks of the production of such proof; or
- (iii) for the whole of the said period, within forty-eight hours of the production of proof that she has given birth to a child:

Provided that a woman shall not be entitled to any maternity benefit or any part thereof, the payment of which is dependent upon the production of proof under this sub-section that she has given birth to a child, unless such proof is produced within six months of the day of her delivery.

Ben. Act
IV of 1939.

(4) The proof required to be produced under sub-section (3) shall be either a certified extract from a birth register under the Bengal Births and Deaths Registration Act, 1873, or a certificate signed by a medical practitioner or such other proof as may be accepted by the employer.

6. (1) If a woman entitled to maternity benefit under this Act dies on the day of her delivery or during the period thereafter for which she is entitled to the maternity benefit, the employer's liability under sub-section (1) of section 4 shall not, by reason of her death, be discharged, and he shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the child; and, if the child does not survive her, to the person nominated by her under sub-section (1) of section 5 or, if she has made no such nomination, to her legal representative.

Payment
of materni-
ty benefit
in case of a
woman's
death.

(2) If a woman dies during the period for which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the period up to and including the day of her death, provided that any sum already paid to her in excess of such liability under clause (i) of sub-section (3) of section 5 shall not be recoverable from her legal representative. Any amount due at the woman's death shall be paid to the person nominated by her under sub-section (1) of section 5, or, if she has made no such nomination, to her legal representative.

The Bengal Maternity Benefit Act, 1939.

[Beng. Act IV]

(Sections 7—11.)

No notice of dismissal to be given to a woman in certain cases.

7. (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

(2) (a) No notice of dismissal given without sufficient cause by an employer to a woman within a period of six months before her delivery shall have the effect of depriving her of any maternity benefit to which but for such notice she may have become entitled under this Act.

(b) If any question arises as to whether any notice of dismissal is one to which clause (a) applies, such question shall be referred to the Inspector of Factories. An appeal from the Inspector's decision shall, within sixty days thereof, lie to the Labour Commissioner whose decision shall be final.

Penalty for working for payment during permitted period of absence.

8. If a woman does any work for which she receives payment in cash or kind after she has been permitted by her employer to absent herself under the provisions of section 5, she shall be liable, on conviction, to a fine not exceeding ten rupees.

Penalty for contravention of the Act by an employer and application of fine in payment of compensation.

9. (1) If any employer contravenes any provision of this Act, he shall, on conviction, be liable to a fine which may extend to five hundred rupees.

(2) Whenever a Court imposes a fine under this section or confirms in appeal, revision or otherwise such a sentence, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment of compensation to the woman concerned for any loss or damage caused to her by the contravention of a provision of this Act on account of which the fine has been imposed.

Penalty for contravention of the Act by a woman.

10. If any woman works in any factory within four weeks after the day of her delivery, she shall be liable, on conviction, to a fine not exceeding ten rupees.

Cognizance of offences.

11. (1) No prosecution under this Act shall be instituted except by, or with the previous sanction of, the Inspector of Factories, and no such prosecution shall be instituted until the expiry of the period of appeal under sub-section (2) or, if such an appeal is preferred, unless the Labour Commissioner, by his order thereon, sanctions a prosecution.

(2) Where the Inspector of Factories decides either to institute a prosecution under this Act or to grant sanction thereto, he shall forthwith communicate his order to the person complained against, who may, within thirty days of the date of the said order, appeal to the Labour Commissioner against such decision. The decision of the Labour Commissioner on such appeal shall be final.

(3) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try any offence against this Act or any rules thereunder.

The Bengal Maternity Benefit Act, 1939.

of 1939.]

(Sections 12—15.)

12. Where on an application by an employer or a woman in such behalf, the Inspector of Factories refuses either to institute a prosecution under this Act or to grant previous sanction thereto, he shall without delay communicate to the applicant his order of refusal, and an employer or a woman aggrieved by such order may, within thirty days of the date thereof, appeal to the Labour Commissioner against such order. The decision of the Labour Commissioner on such appeal shall be final.

Appeal against refusal to prosecute or grant sanction thereto.

13. No Court shall take cognizance of any offence against this Act or any rule thereunder unless complaint thereof has been made to the Inspector of Factories within six months of the date on which the offence is alleged to have been committed.

Limitation of prosecution.

14. (1) The Provincial Government may make rules¹ for the purpose of carrying into effect the provisions of this Act.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the preparation and maintenance of a muster roll or register or a combined muster roll and register, and the particulars to be entered in such muster roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 41 of the Factories Act, 1934;
- (b) the inspection of factories for the purposes of this Act by Inspectors of Factories;
- (c) the exercise of powers and the performance of duties by Inspectors of Factories for the purposes of this Act;
- (d) the method of payment of maternity benefit in so far as provision has not been made in this Act;
- (e) the forms of notices under clause (a) and clause (b) of sub-section (1) of section 5; and
- (f) procedure to be observed in the disposal of appeals under sub-section (2) of section 7 or sub-section (2) of section 11 or section 12.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The power to make rules under this Act shall be subject to the condition of previous publication.

15. An abstract of the provisions of this Act and the rules thereunder in the local vernaculars shall be exhibited in a conspicuous manner by the employer in every part of a factory in which women are employed.

Abstract of this Act and the rules thereunder to be exhibited.

¹For rules under this Act, see notification No. 4 Com., dated the 2nd January, 1940, published in the *Calcutta Gazette* of the 4th January, 1940.

Bengal Act V of 1939.¹

THE CALCUTTA MUNICIPAL (AMENDMENT AND VALIDATION) ACT, 1939.

[29th June, 1939.]

An Act further to amend the Calcutta Municipal Act, 1923, for removal of certain doubts about the extension of term of office of the Councillors and Aldermen of the Corporation of Calcutta.

Ben. Act
III of
1923.

WHEREAS the term of office of existing elected Councillors including those appointed under section 36 of the Calcutta Municipal Act, 1923, and of the existing Aldermen of the Corporation of Calcutta was extended by notification No. 3114M., dated the 20th September 1938, issued under the proviso to section 39 of the Calcutta Municipal Act, 1923;

AND WHEREAS doubts have been raised as to the validity of the said notification owing to the language of the existing proviso to section 39 and of section 45 of the said Act;

AND WHEREAS it is expedient to remove such doubts by amending the said sections in the manner hereinafter appearing and to give retrospective effect to the said amendments;

AND WHEREAS it is also expedient to validate the said notification;

It is hereby enacted as follows:—

1. This Act may be called the Calcutta Municipal (Amendment and Validation) Act, 1939. Short title.

2, 3, 4 and 5.—[*Repealed by Bengal Act XVI of 1946.*]

6. The notification No. 3114M., dated the 20th September, 1938, which was issued under the proviso to section 39 of the said Act,² shall be deemed to be as valid as if it had been issued under the proviso to the said section as ³[amended] by section 3 of this Act and is hereby declared to have full force and effect.

Validation of notification extending the term of office of Councillors and Aldermen.

7. If any difficulty arises as to the preparation or publication of the electoral rolls for the purpose of, or the holding of, the next general elections to be held under section 45 of the said Act³ before the expiration of the term of office extended under the proviso to section 39 of the said Act², the Provincial Government may by order authorise any matter or thing to be done which appears to them to be necessary for the proper preparation or publication of the rolls or for the proper holding of the elections.

Power of Provincial Government in respect of the next general election to be held before the expiry of the extended term of office of the Councillors and Aldermen.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 22nd December, 1938.

For proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 2nd, 12th and 17th May, 1939, and for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 31st March, 1939.

²i.e. the Calcutta Municipal Act 1923 (Ben. Act III of 1923).

³Substituted by the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946) for the word "substituted".

Bengal Act X of 1939.¹

THE BENGAL RURAL POOR AND UNEMPLOYED RELIEF ACT, 1939.

[20th July, 1939.]

An Act to provide for the relief of the rural poor and unemployed.

WHEREAS it is expedient to provide for the relief of the rural poor and unemployed;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Rural Poor and Unemployed Relief Act, 1939.

Short title,
extent and
commence-
ment.

Ben. Act
V of 1919.

(2) It extends to those parts of ²[West Bengal] in which the Bengal Village Self-Government³ Act, 1919, is in force.

(3) It shall come into force on such date⁴ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context, the words "*chaukidar*", "*circle officer*", "*district board*", "*district magistrate*", "*union*", "*union board*", and "*union rate*" shall have the same meanings as in the Bengal Village Self-Government Act, 1919.

Defini-
tions.

3. (1) In every union there shall be a Poor Fund (hereinafter referred to as the Fund), to which shall be paid all sums received as voluntary contributions and all other receipts referred to in section 13.

Poor Fund
and Poor
Boxes.

(2) For the purpose of collecting such contributions and in addition to such other methods of collection as may be determined by the committee referred to in section 4, Poor Boxes shall, in the manner determined by the committee, be placed in the office of the union board and in such other places in the union as the committee may determine.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 26th August, 1937, Part IVB, pages 34 to 37; the report of the Select Committee was presented to the Bengal Legislative Council on the 13th February, 1939; for Proceedings in the Bengal Legislative Council, see Bengal Legislative Council Proceedings, 1937, Volume II, page 291, *ibid* 1938, Volume II, pages 364-380, *ibid* 1939, Volume I, page 139 and pages 224-241 and *ibid* Volume II, pages 360 and 361; and for Proceedings in the Bengal Legislative Assembly, see the Bengal Legislative Assembly Proceedings, 1939, Volume LIV, No. 5, pages 38-66.

²The words within square brackets were substituted for the word "Bengal" by the Indian Independence (Adaptations of Bengal and Punjab Acts) Order, 1948.

³The Act was brought into force on the 1st September, 1939, *vide* notification No. 8776Mis., dated the 10th August, 1939, published in Part I, page 2035, of the *Calcutta Gazette* of the 17th August, 1939.

10 *The Bengal Rural Poor and Unemployed Relief Act, 1939.*

[Ben. Act X

(Sections 4—6.)

(3) There shall be two '[separate] locks for each Poor Box, the key of one of which shall remain in the custody of the president of the committee and the key of '[the other] in the custody of such member of the committee as may be appointed by the committee for this purpose.

(4) The Poor Box shall be opened in the presence of at least three members of the committee, and the contents thereof counted and entered in Form I in the schedule to this Act under the initial of the members present.

(5) Subscriptions and contributions otherwise collected shall also be entered in Form I in the schedule to this Act and to each subscriber or contributor there shall be given in writing a receipt for the amount received from him.

Poor Fund
Committee.

4. (1) The Fund shall, in each union, be managed by a committee, which shall consist of the members of the union board *ex-officio*, together with such other persons, not exceeding five in number; as may be co-opted by the members of the union board from among contributors to the Fund.

(2) The president and vice-president of the union board shall be *ex-officio* president and vice-president, respectively, of the committee.

(3) At any meeting of the committee three members thereof shall form a quorum.

Custody
and
accounts of
the Fund.

5. (1) All contributions to the Fund shall remain in the custody of the president of the committee.

(2) The accounts of the Fund shall be maintained by the president of the committee in Form I in the schedule to this Act and shall be audited annually by the circle officer at the times at which the accounts of the union board are audited.

Poor and
unemploy-
ed list.

6. (1) Every committee shall prepare and maintain a poor and an unemployed list (hereinafter referred to as the List) in which shall be entered—

(a) the names of all persons (other than dependents) within the union who are not assessed to union rate; and

(b) the names of all wage-earners (other than dependents) who have been unemployed for a period exceeding one month and have no means of subsistence other than their wages.

(2) Any person whose name has not been entered in the List, may apply to the committee to have his name so entered and the committee shall on such application pass such orders consistent with this section as it thinks fit.

'This word within square brackets was substituted for the words "different kinds of" by section 2(a) of the Bengal Rural Poor and Unemployed Relief (Amendment) Act, 1941 (Ben. Act II of 1941).

'These words within square brackets were substituted for the words "another lock" by section 2 (b) of the same Act.

The Bengal Rural Poor and Unemployed Relief 11
Act, 1939.

of 1939.]

(Sections 7-9.)

(3) The List shall be prepared and maintained in Form II in the schedule to this Act, and shall, after such inquiry as the committee thinks fit, be checked and revised in all its particulars by the committee once in every quarter.

(4) The List shall be open to inspection by the local public during the office hours at the office of the union.

7. During periods of distress and scarcity, and at such periods of the year as may be decided by the committee, each *chaukidar* shall, within the area of his jurisdiction, visit daily the houses of all persons named in the List, and if he finds that any such person or any dependent of any such person has been without food for a period of more than twenty-four hours, he shall immediately report the fact to the president of the committee or, in his absence, to the vice-president thereof or in the absence of both the president and the vice-president to such other member of the committee as may be authorized by the committee to receive such reports. Reports by
chauki-
dars.

8. (1) On receipt of a report submitted under section 7 or by any other reliable person, the president or vice-president or such other member of the committee, as the case may be, after such inquiry, if any, as he thinks fit, and with the least possible delay, shall grant relief from the Fund to each person whose name has been so reported. Payment
of relief.

(2) Such relief shall be granted at the rate of not more than two annas *per diem* for each person of or above the age of twelve years and half an anna *per diem* for each person below the age of twelve years, and shall not ordinarily be granted for a period exceeding five days at any one time:

¹[Provided that the committee may, at a meeting thereof, direct that such relief be granted—

(i) for a period exceeding five, but not exceeding ten, days at any one time;

(ii) in the form of clothing or other articles.]

9. (1) If any person of or above the age of sixteen years whose name has been reported under section 7 or section 8 is able-bodied, the committee shall attempt to provide him with employment and may, in addition to any relief granted to him under section 8, advance to him from the Fund by way of loan a sum not exceeding five rupees, for the purpose of enabling him to secure employment. Issue of

(2) Every such loan shall be repayable without interest at any time within six months of the date of issue.

¹This proviso within square brackets was substituted for the two original provisos by S. 3 of the Bengal Rural Poor and Unemployed Relief (Amendment) Act, 1941 (Ben. Act II of 1941.).

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Act, 1939.*

[Ben. Act X

(Sections 10—15.)

(3) If any such loan is not so repaid, it shall be realized in the manner provided for the realization of arrears of union rate under the provisions of the Bengal Village Self-Government Act, 1919, together with interest calculated at a rate *per annum* of six and a quarter *per centum*: Ben. Act V of 1919.

Provided that any such loan or portion thereof may be remitted by the committee if two-thirds of the members of the committee so recommended in writing.

(4) An account of every loan shall be maintained in Form III in the schedule to this Act.

Action where the Fund proves inadequate.

10. If at any time the committee is unable from the Fund to meet the needs of such poor or unemployed persons within the union as require relief, it shall report the fact to the district magistrate and shall send to the subdivisional magistrate a copy of such report; and at the same time the president of the committee shall summon a meeting of the inhabitants of the union for the purpose of securing contributions to the Fund.

Power to fine and dismiss *chaukidars*.

11. Any *chaukidar* failing to submit, in the manner provided, the report referred to in section 7 shall be liable to be punished with fine or, in cases of gross neglect of duty, with dismissal, in the manner provided in the Bengal Village Self-Government Act, 1919, for the fining and dismissal of *chaukidars*.

Quarterly statement.

12. A statement in Form IV in the schedule to this Act shall be submitted by the committee to the circle officer at the end of each quarter.

Power of Provincial Government, district boards and union boards to contribute to the Fund.

13. The Provincial Government, and any district board or union board to the extent of its jurisdiction, may contribute to the Fund at any time, and any such contribution shall be disbursed by the committee in accordance with any conditions that may be attached to the contribution.

Statistics.

14. The committee shall collect and submit such statistics as may from time to time be called for by the district board or the district magistrate.

Rules.

15. The Provincial Government may make rules¹ for the purpose of giving effect to the objects of this Act.

¹For rules under this Act, see notification No. 6526 Misc., dated the 14th July, 1941, published in the *Calcutta Gazette* of the 17th July, 1941, Part I.

The Bengal Rural Poor and Unemployed Relief Act, 1939. 13

of 1939.]

THE SCHEDULE.

FORM I.

(Section 5.)

1 Date.	2 Opening balance.	Receipts (including loans re- paid).		5 Total.	Expenditure (including loans issued).				10 Total.	11 Balance.
		3 Source of receipt.	4 Amount.		6 Name and address of payee.	7 Signature or left thumb impression of payee.	8 Amount of relief.	9 Amount of loan.		

FORM II.

[Section 6(3).]

PART I.

Persons not assessed to union rate.

Name and father's name.	Address.	Occupation.	Dependents.				
			Able-bodied.		Disabled.		Under 12 years.
			Over 12 years.		Over 12 years.		
			M.	F.	M.	F.	
1	2	3	4	5	6	7	8

PART II.

Unemployed persons..

Name and father's name.	Address.	Occupation.	Dependents.				
			Able-bodied.		• Disabled.		Under 12 years.
			Over 12 years.		Over 12 years.		
			M.	F.	M.	F.	
1	2	3	4	5	6	7	8

**The Bengal Rural Poor and Unemployed Relief
Act, 1939.**

Form III of 1939

(The Schedule.)

FORM III.

[Section 9(4).]

Issue.			Recoveries.			Balance.
Date.	Name and address.	Amount.	Date.	Details of receipt.	Amount.	
1	2	3	4	5	6	7

FORM IV.

(Section 12.)

Opening balance.	Receipts.			Expenditure.			Closing balance.
	Subscriptions.	Loans repaid.	Total.	Relief granted.	Loans issued.	Total.	
1	2	3	4	5	6	7	8

THE BENGAL DENTISTS ACT, 1939.

*Page 15-25—

Strike out the Bengal Dentists Act, 1939 (Bengal Act XII of 1939), and insert the following note, namely:—

(Repealed by West Bengal Act XIII of 1951, section 3.)

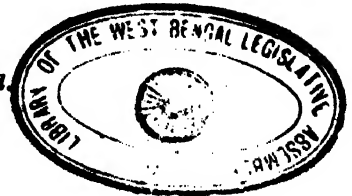
[No. 48, dated the 1st April, 1952.]

**This correction shall be deemed to have come into force on the first day of January, 1951.*

3. Establishment of the Bengal Dental Board.
4. Constitution of the Board.
5. Cessation of membership and filling of casual vacancies.
6. Term of office of members.
7. Fees payable to members.

Business of the Board.

8. Meetings.



Establishment.

9. Appointment of the Registrar and other officers.
10. Conditions of service of employees of the Board.

The Register of Registered Dental Practitioners.

11. Maintenance of register by Registrar.
12. Persons entitled to be registered.
13. Power to Board to refuse registration in certain cases.
14. Erasure of fraudulent or incorrect entries.
15. Description of registered practitioner.
16. Removal of names from register.
17. Appeal to Provincial Government from decision of the Board.
18. Qualified practitioners' certificates.
19. Unregistered person not to hold certain appointments.
20. Alteration of the schedule.
21. Power to Board to call for information and attend examination.
22. Annual list of registered dental practitioners.
23. Penalty.

Rules and Regulations.

24. Rules by the Provincial Government.
25. Power of the Board to make regulations.
26. Publication of rules and regulations.

Miscellaneous.

27. Disposal of fees, etc.

THE SCHEDULE.

Bengal Act XII of 1939.¹

THE BENGAL DENTISTS ACT, 1939.

[17th August, 1939.]

An Act to provide for the registration of dental practitioners in Bengal.

WHEREAS it is expedient to provide for the registration of dental practitioners in Bengal;

It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Bengal Dentists Act, 1939. Short title, extent and commencement.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the Provincial Government may, by notification, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) "the Board" means the ²[West Bengal] Dental Board established under section 3;

(b) "Chairman" means the Chairman of the Board;

(c) "Medical Council" means the ²[West Bengal] Council of Medical Registration constituted under the Bengal Medical Act, 1914;

(d) "member" means a member of the Board;

(e) "notification" means a notification published in the *Official Gazette*;

(f) "prescribed" means prescribed by rules or regulations made under this Act;

(g) "register" means a register maintained under section 11;

(h) "registered dental practitioner" means a person registered under the provisions of this Act; and

(i) "registered medical practitioner" means any person registered under the provisions of the Bengal Medical Act, 1914.

Ben. Act
VI of
1914.

¹For Statement of Objects and Reasons see *Calcutta Gazette*, dated 17th March, 1938; the report of the Select Committee was presented to the Bengal Legislative Assembly on the 29th July, 1938; for Proceedings of the Bengal Legislative Assembly, see the Proceedings of the meetings of the Bengal Legislative Assembly held on the 1st April, 29th July and the 17th August, 1938; and for Proceedings of the Bengal Legislative Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 8th February and 7th March, 1939.

²The words within square brackets were substituted for the word "Bengal" by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act was brought into force on the 16th May, 1940, vide notification No. 1027 Medl., dated the 13th May, 1940, published in the *Calcutta Gazette* of the 16th May, 1940, Part I, page 1467.

(Sections 3—5.)

Constitution of the Board.

Establishment of the West Bengal Dental Board.

3. The Provincial Government shall, as soon as possible after the commencement of this Act, by notification, establish a Board, to be called "the '[West Bengal] Dental Board'" for the purpose of carrying out the provisions of this Act: such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Constitution of the Board.

4. (1) For the first five years after the establishment of the Board under section 3, the Board shall consist of the following nine members to be appointed by the Provincial Government, one of whom the Provincial Government shall appoint as Chairman, namely:—

- (a) seven dental practitioners holding one of the qualifications specified in the schedule, and
- (b) two registered medical practitioners.

(2) After the said period of five years, the Board shall consist of the following nine members, who shall elect in the manner prescribed by the Provincial Government, one of their number to be Chairman, namely:—

- (a) seven persons to be elected by and from among the registered dental practitioners, and
- (b) two registered medical practitioners to be elected by the Medical Council.

(3) The election of the members under sub-section (2) shall be held by such date and in such manner as may be prescribed by the Provincial Government.

(4) If the full number of members referred to in sub-section (2) is not elected by the date fixed by the Provincial Government under sub-section (3), the Provincial Government shall, by notification, appoint to the vacancy a person qualified for election thereto; and any person so appointed shall be deemed to be a member of the Board as if he has been duly elected thereto.

(5) The name of the Chairman and every member appointed or elected under this section shall be published in the *Official Gazette*.

Cessation of membership and filling of casual vacancies.

5. (1) A member shall be deemed to have vacated his seat—

- (a) if having been appointed under clause (a) of sub-section (1) of section 4 he fails to have his name registered under this Act within six months of the date of publication of his name under sub-section (5) of that section; or
- (b) if his name has been removed from the register; or
- (c) if he is absent without excuse sufficient in the opinion of the Board from three consecutive meetings of the Board; or

of 1939.]

(Sections 6—8.)

(d) if he is absent out of India for any period exceeding six consecutive months.

(2) A member may at any time resign his membership by writing under his hand addressed to the Chairman and the seat of such member shall thereupon become vacant.

(3) On the occurrence of any vacancy in the Board, the Chairman shall forthwith report the fact of such vacancy to the Provincial Government, who shall thereupon, notify the vacancy in the *Official Gazette*.

(4) A vacancy in the Board shall be filled by fresh appointment or election, as the case may be, in accordance with the provisions of section 4, and any person appointed or elected to fill such vacancy shall hold office for the remainder of the period for which the member whose place he takes was appointed or elected.

(5) The powers of the Board may be exercised notwithstanding any vacancy in the number of its members fixed by section 4.

6. Subject to the provisions of section 5, a member shall hold office for a term of five years and shall be eligible for election or re-election.

Term of
office of
members.

7. There shall be paid to the members such fees, if any, for attendance at meetings of the Board or of Committees of the Board and such travelling expenses for such attendance and for journeys undertaken in the discharge of their duties under this Act as may be prescribed by the Provincial Government.

Fees payable to
members.

Business of the Board.

8. (1) Subject to any rules made under section 24, the Board shall make regulations to regulate—

Meetings.

- (a) the mode of transaction of business;
- (b) the times and places at which its meetings shall be held;
- (c) the issue of notices convening such meetings;
- (d) the conduct of business thereat; and
- (e) the constitution of committees, the délegation of powers to such committees and the procedure of the committees (including quorum) in the transaction of business.

(2) All questions arising at a meeting shall be decided by the votes of the majority of the members present and voting, or in the case of an equality of votes, by the casting vote of the person presiding at the meeting.

(3) At least five members shall be present to form a quorum at a meeting of the Board.

(Sections 9—11.)

(4) Until such time as the regulations made under subsection (1) have come into operation, the Chairman may summon a meeting at such time and place as he thinks fit, by letter addressed to each member.

Establishment.

Appoint-
ment of the
Registrar
and other
officers.

9. (1) With the previous sanction of the Provincial Government, the Board—

(a) shall appoint a Registrar,

(b) may grant leave to such Registrar and appoint a person to act in his place, and

(c) shall pay to such Registrar and to the person (if any) appointed to act in his place such salary and such allowances (if any) as the Board may determine.

(2) The Registrar shall act as Secretary to the Board.

(3) The Board may appoint such other officers and clerks and servants as it may consider necessary for the purposes of this Act.

(4) The duties of the Registrar, the officers and the clerks shall be such as may be prescribed by the Board.

(5) The Registrar and all officers and clerks appointed under this section shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

Conditions
of service of
employees
of the
Board.

10. The Board may make regulations with the previous sanction of the Provincial Government for regulating the pay and other conditions of service of and the grant of pensions, gratuities and other similar allowances to its employees and for the creation and management of a provident fund and for compelling contributions to such provident fund on the part of its employees.

The Register of Registered Dental Practitioners.

Main-
tenance
of register
by Regis-
trar.

11. (1) The Registrar shall under orders of the Board, keep a register of registered dental practitioners in accordance with the provisions of this Act in such manner and in such form as may be prescribed. The name, residence and qualifications (with the dates thereof) of every person who is registered under this Act shall be entered in the register.

(2) It shall be the duty of the Registrar under the orders of the Board to keep the register correct and from time to time to make all necessary alterations in the addresses of persons registered, to enter any additional qualifications which any registered person may have obtained subsequent to his registration, and to erase the name of any registered person who has died. The Provincial Government may prescribe a fee for the entry of any additional qualification.

(3) To enable the Registrar to fulfil the duties imposed upon him under this section he may send through the post a letter to any registered dental practitioner according to his address in the register, to inquire whether he has ceased to

of 1939.]

(Sections 12—15.)

practise or has changed his residence, and if no answer is received to such letter within a period of six months from its despatch, the Registrar may erase the name of such practitioner from the register :

Provided that any name erased under this sub-section may be re-entered in the register under the direction of the Board.

12. (1) Every person who possesses any of the qualifications specified in the schedule shall be entitled to be registered under this Act on such terms and conditions and for such period and on payment of such fee as may be prescribed by the Provincial Government.

Persons entitled to be registered.

(2) The Board may permit the registration under this Act of any person who does not possess any of the qualifications specified in the schedule, provided that such person—

(a) has been *bona fide* engaged in the practice of dentistry in Bengal for not less than five years previous to the commencement of this Act, and

(b) applies for registration within one year from the commencement of this Act.

(3) The Board may permit the registration under this Act of any person who does not possess any of the qualifications specified in the schedule and ¹[who has been *bona fide* engaged in the practice of dentistry in Bengal since before the commencement of this Act, if such person, not later than the 31st day of May, 1950], passes a special examination to be held by the State Medical Faculty of ²[West Bengal] for this purpose. The conduct of and all matters connected with such examinations and the fees to be paid for the same shall be regulated by rules made in this behalf by the Provincial Government.

13. The Board may refuse to permit the registration under this Act of any person who is or has been convicted by a Criminal Court of any such offence as in the opinion of the Board involves moral turpitude or who after due inquiry has been held guilty by the Board of infamous conduct in any professional respect.

Power to Board to refuse registration in certain cases.

14. Any entry in the register which is proved to the satisfaction of the Board to have been fraudulently or incorrectly made, may be erased from the register under an order in writing of the Board.

Erasure of fraudulent or incorrect entries.

15. A person registered under this Act—

(a) shall, by virtue of being so registered, be entitled to take and use the description of dentist, dental practitioner, dental surgeon or surgeon dentist,

Description of registered practitioner.

¹These words within square brackets were substituted for the original words by s. 2 of the Bengal Dentists (Amendment) Act, 1947 (Ben. Act. III of 1947).

²See foot-note 2 on page 17, *ante*.

(Sections 16—19.)

- (b) shall not take or use, or affix to or use in connection with his premises, any other title or description which is calculated to suggest that he possesses any professional status or qualifications which he in fact does not possess.

Removal of
names
from
register.

16. (1) The Board may direct that the name of any dental practitioner who is or has been convicted by a Criminal Court of any such offence as in the opinion of the Board involves moral turpitude, such conviction not having been subsequently quashed, or who after due inquiry has been held guilty by the Board of infamous conduct in any professional respect shall be removed from the register, and may direct that any name so removed shall be re-entered.

(2) The Board may, on receiving a complaint or information of unprofessional conduct on the part of a registered dental practitioner or, when it has reason to believe that any such practitioner is guilty of unprofessional conduct, on its own motion, after due inquiry (at which an opportunity has been given to such dental practitioner to be heard in his defence), make an order directing the Registrar to erase from the register the name of the said practitioner.

Appeal to
Provincial
Govern-
ment from
decision of
the Board.

17. (1) An appeal shall lie to the Provincial Government from every decision of the Board under section 13 or section 16.

(2) Every appeal under sub-section (1) shall be preferred within three months from the date of such decision.

Qualified
practi-
tioners'
certificates.

18. (1) Any expression importing a person recognised by law as a dental practitioner or a member of the dental profession, shall in all Bengal Acts and in all Central Acts in force in ¹[West Bengal], mean a dental practitioner registered under this Act.

(2) No certificate required by any Bengal Act or any Central Act in force in ¹[West Bengal] from any dental practitioner shall be valid unless the person signing the same is registered under this Act.

Unregis-
tered
persons
not to
hold
certain
appoint-
ments.

19. After the expiration of two years from the commencement of this Act, no person who is not registered under this Act and who does not hold either a dental qualification specified in the schedule or a medical qualification registrable under the Bengal Medical Act, 1914, shall, except with the special sanction of the Provincial Government, hold any appointment as a dental surgeon in any dispensary, hospital, infirmary or lying-in hospital which is supported partially or entirely by public or local funds.

Ben. Act.
VI of
1914.

¹See foot-note 2 on page 17, ante.

of 1939.]

(Sections 20—23.)

20. If it appears to the Provincial Government, on the report of the Board or otherwise, that—

Alteration of the schedule.

- (a) the standard of examinations held by any of the institutions conferring a qualification specified in the schedule is lower than that prescribed under clause (a) of sub-section (2) of section 25, or
- (b) the standard of examination held by any institution conferring a qualification not specified in the schedule is equal to or higher than that prescribed under the said clause,

the Provincial Government may, after consultation with the Board, by notification in the *Official Gazette*, direct that the possession of any qualification referred to in clause (a) shall not entitle any person to registration under this Act or that the possession of any qualification referred to in clause (b) shall, subject to the provisions of this Act, and to such conditions as the Provincial Government may impose, entitle a person to be so registered, as the case may be, and the schedule shall thereupon be deemed for all purposes of this Act to be altered accordingly.

21. The governing body or authority of any institution included in or desirous of being included in the schedule, shall, from time to time, when required by the Board furnish such particulars as the Board may require of any course of study adopted or examination held by such body or authority or in such institution with reference to the grant of any dental qualification; and shall permit any member or other person deputed by the Board in this behalf to attend and be present at any such examination.

Power to Board to call for information and attend examination.

22. (1) The Registrar shall, in every year, on or before a date to be fixed in this behalf by the Board, cause to be printed and published a correct list of the names and qualifications of all persons for the time being entered in the register and the dates when such qualifications are granted in alphabetical order according to the surnames of the persons registered.

Annual list of registered dental practitioners.

(2) Every court shall presume that any person whose name is entered in the latest of such lists is duly registered under this Act, and that any person whose name is not so entered is not registered under this Act.

23. (1) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses in connection with his name or title any words or letters representing that he is so registered, shall, whether any person is actually deceived by such pretence or representation or not, be punished on conviction with fine which may extend to three hundred rupees.

Penalty.

(2) Whoever voluntarily and falsely assumes or uses any title or description or any addition to his name implying that he holds a degree, diploma, licence or certificate, or any qualification in relation to dentistry or dental surgery, shall be punishable with a fine which may extend to two hundred and fifty rupees.

(Sections 24, 25.)

(3) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this section.

(4) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the Provincial Government or, with the previous sanction of the Provincial Government, by the Board.

Rules and Regulations.

Rules by
the
Provincial
Govern-
ment.

24. (1) The Provincial Government may make rules¹ to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

- (a) to fix the date of, and to regulate the manner of, election of members under sub-section (3) of section 4 and the manner of election of Chairman under sub-section (2) of that section;
- (b) to prescribe the form of the register of registered practitioners to be maintained under this Act and the manner of keeping the same according to the provisions of this Act;
- (c) to prescribe the fees, if any, payable for attendance of members and their travelling allowances under section 7;
- (d) to fix the fee chargeable for the entry of additional qualifications under sub-section (2) of section 11;
- (e) to regulate the terms and conditions subject to which, the period for which, and the fees on payment of which, the name of a person may be entered in the register under section 12;
- (f) to regulate the conduct of and all matters connected with examinations under sub-section (3) of section 12 and to fix the fees to be paid for such examinations; and
- (g) to regulate the application of fees levied under this Act and of other moneys received by the Board for the purposes of this Act.

Power of
the Board
to make
regulations.

25. (1) In addition to the powers conferred by sections 8 and 10 the Board may, subject to any rules made under section 24 and with the previous sanction of the Provincial Government, make regulations¹ for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the courses of study and the standard of examinations of persons for practice of dentistry or dental surgery;

¹For rules and regulations, see the Bengal Statutory Rules and Orders, 1940.

of 1939.]

(Sections 26, 27.—The Schedule.)

(b) inspection of institutions included in or desirous of being included in the schedule for purposes of section 20; and

(c) the duties of the Registrar, officers and clerks and other servants of the Board.

26. All rules and regulations made under this Act shall be published in the *Official Gazette*.

Publication of rules and regulations.

Miscellaneous.

27. All fees or other moneys received by the Board under this Act shall be applied for the purposes of this Act in such manner as may be prescribed by the Provincial Government.

Disposal of fees, etc.

THE SCHEDULE.

PERSONS WHO ARE ENTITLED TO HAVE THEIR NAMES ENTERED IN THE REGISTER OF REGISTERED PRACTITIONERS.

(See sections 12 and 20.)

I.—Indian List.

1. Licentiates in Dental Surgery of the State Medical Faculty of [West Bengal] and until the said Faculty commences to hold examinations for the purpose of granting such qualification, persons holding a licence, diploma or certificate in Dental Surgery granted by the Calcutta Dental College and Hospital.

2. Graduates and Licentiates in Dental Surgery of any University or Dental Board established by an Act of the Central Legislature or of a Provincial Legislature.

Ben. Act VI of 1914.

3. Persons holding qualifications registrable under the Bengal Medical Act, 1914, and possessing the additional qualification of having passed a special examination for the practice of dentistry or dental surgery to be held from time to time by the State Medical Faculty of [West Bengal] in accordance with the standard prescribed by the Board for the purpose of conferring such qualification:

Provided that such additional qualification will not be required in the case of persons who at the commencement of this Act are *bona fide* engaged in the practice of dentistry or dental surgery either separately or in conjunction with the practice of medicine or surgery.

• II.—Foreign List.

41 & 42 Vict. Ch. 33 and 11 & 12 Geo. V, Ch. 21.

1. Persons holding qualifications registrable under the British Dentists Acts, 1878 and 1921.

2. British Indian subjects holding foreign dental qualifications, which entitle them to practise in the country where the qualification was obtained:

Provided that such qualifications are recognised by the Provincial Government after consultation with the Board.

¹See foot-note 2 on page 17, ante.

Bengal Act XIII of 1939.¹

THE BENGAL TENANCY (SECOND AMENDMENT) ACT, 1939.

[24th August, 1939.]

An Act further to amend section 52 of the Bengal Tenancy Act, 1885.

WHEREAS it is expedient further to amend section 52 of the Bengal Tenancy Act, 1885, in the manner hereinafter appearing; VIII of 1885.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Tenancy (Second Amendment) Act, 1939.

2. *[Repealed by the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).]*

Applica-
tion.

3. (1) Notwithstanding anything contained in any other law—

(a) the provisions of section 52 of the Bengal Tenancy Act, 1885, as amended by this Act shall apply to all suits instituted thereunder on or after the date of the commencement of this Act, and also, subject to such conditions as may be prescribed, to all suits under clause (a) of sub-section (1) of that section which are pending on the said date, and VIII of 1885.

(b) ²[if a decree has been passed on or after the twenty-seventh day of August, 1937, and before the commencement of this Act in a suit under the said clause], the Court shall, on application accompanied by the prescribed fee and made within one year from the commencement of this Act by a tenant against whom such decree has been passed, set aside the decree and restore and rehear the suit in the prescribed manner and in accordance with the provisions of the said section as amended by this Act.

(2) In this section “prescribed” means prescribed by rules made by the Provincial Government hereunder.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 22nd September, 1938; for Proceedings of the Bengal Legislative Council, see the Proceedings of the meetings of the Bengal Legislative Council held on the 8th August, 1938, 8th, 10th and 28th February and 6th March, 1939; for Proceedings of the Bengal Legislative Assembly see the Proceedings of the meetings of the Bengal Legislative Assembly held on the 31st March and the 5th April, 1939.

²The words and figure in square brackets were substituted for the original words by s. 6 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

Bengal Act XV of 1939.

THE BENGAL TANKS IMPROVEMENT ACT, 1939.

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SECTION.

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5. Power to Collector in respect of a derelict irrigation work.
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12. Authorised person to pay rent to owner and compensation to person other than the owner dispossessed by him.
13. Authorised person to pay compensation to persons who have right to fish in the tank, etc., on payment.
14. Authorised person to pay compensation to cultivators who hold a lease of the bed of a tank.
- 14A. Payment of compensation to persons having rights in lands adjoining a tank of which possession is taken under this Act.
15. Permission of the authorised person necessary to use or occupy the tank, etc.
16. Rights to use the water of the tank.
- 16A. Maximum irrigation area.
- 16B. Preparation of list.
17. Payment and rate of fees.
- 17A. Passage of water.
18. Power of authorised person to lease out the tank, etc.
19. Bar to transfer of tank except as provided in this Act.
- 19A. Bar to acquisition of occupancy rights in lands leased out under section 18.
20. Application of the Act to tank improved as a relief measure.
21. Restoration of possession of tank.
22. Record-of-rights in respect of derelict tanks.
23. Application of the Act to certain tanks.
24. Costs.
25. Decision of disputes.
26. Appeal against action of authorised person.
27. Other appeals.
28. Procedure in proceedings under section 27.
29. Order of Civil Court not to operate during period of possession.
30. Bar to jurisdiction of Civil Courts.
31. Power to enter land to make survey, etc.
32. Power to compel production of statements and documents.
33. Power to enforce attendance of witnesses and production of documents.
34. Power to authorise subordinate officer to exercise Collector's powers.
35. Penalty.
36. No reduction of revenue for anything done under this Act.
37. Power to make rules.

Bengal Act XV of 1939.¹

THE BENGAL TANKS IMPROVEMENT ACT, 1939.

[12th October, 1939.]

An Act to provide for the improvement of tanks in Bengal for purposes of irrigation.

WHEREAS it is expedient to provide for the improvement of tanks in Bengal for purposes of irrigation;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Tanks Improvement Act, 1939.

(2) It extends to the whole of ²[West Bengal].

³(3) It shall come into force in such areas on such dates as the Provincial Government may, by notification in the *Official Gazette*, direct.

Short
title,
extent
and com-
mence-
ment.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, Extra ordinary, dated the 6th August, 1937, pages 208-219; and for report of the Select Committee, see *Calcutta Gazette*, dated the 28th July, 1938, Part IV A, pages 151-159; and for Proceedings in the Bengal Legislative Assembly, see Bengal Legislative Assembly Proceedings—1937, Vol. LIII, No. 2, pages 314-320, 1938, Vol. LIII, No. 1, page 66, and 1938, Vol. LIII, No. 3, page 173 and pages 222-237; and for Proceedings in the Bengal Legislative Council, see Bengal Legislative Council Debates—1939, Vol. I, page 56, page 137, pages 451-456 and pages 467-485, 1939, Vol. II, pages 168-169, page 526 and page 954.

²The words in square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act was brought into force in such areas and on such dates as follows:—

- (1) On the 22nd November, 1940, in the districts of Birbhum, Bankura, Burdwan and Murshidabad (*vide* notification No. 10772Misc., dated the 19th November 1940, published in the *Calcutta Gazette*, dated the 28th November, 1940, Part I, page 3215);
- (2) On the 10th April, 1941, in the district of Malda (*vide* notification No. 3751Misc., dated the 5th April, 1941, published in the *Calcutta Gazette*, dated the 10th April, 1941, Part I, page 877);
- (3) On the 28th October, 1943, in the district of Bogra (*vide* notification No. 14465Misc., dated the 18th October, 1943, published in the *Calcutta Gazette*, dated the 28th October, 1943, Part I, page 1573);
- (4) On the 6th May, 1943, in the district of Nadia (*vide* notification No. 6467Misc., dated the 1st May, 1943, published in the *Calcutta Gazette*, dated the 13th May, 1943, Part I, page 903);
- (5) On the 22nd June, 1944, in the districts of Midnapore and Rajshahi (*vide* notification No. 10728Misc., dated the 14th June, 1944, published in the *Calcutta Gazette*, dated the 22nd June, 1944, Part I, page 829);
- (6) On the 17th August, 1944, in the district of Hooghly (*vide* notification No. 13826Misc., dated the 12th August, 1944, published in the *Calcutta Gazette*, dated the 17th August, 1944, Part I, page 1043);
- (7) On the 28th November, 1945, in the district of Dinajpur (*vide* notification No. 64T.I., dated the 15th November, 1945, published in the *Calcutta Gazette*, dated the 29th November 1945, Part I, page 1977);
- (8) On the 11th July, 1946, in the districts of Rangpur, Mymensingh, Dacca, Tippera and Chittagong (*vide* notification No. 665T.I., dated the 5th July, 1946, published in the *Calcutta Gazette*, dated the 11th July, 1946, Part I, page 1073).
- (9) On the 1st September, 1948, in the district of 24-Parganas (*vide* notification No. 5097T.I., dated the 12th August, 1948, published in the *Calcutta Gazette*, dated the 26th August, 1948, Part I, page 1156).

(Sections 2, 3.)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

¹(a1) "agricultural land" includes land used for the growing of vegetables and the like and also waste land which is capable of cultivation but does not include a fruit garden, an orchard, any temple, mosque or homestead land;

(1) "authorised person" means the Collector, a local authority, co-operative society, or any other person who takes possession of a tank under the provisions of this Act and includes the successors in interest of such a person;

(2) "Collector" includes a magistrate in charge of a subdivision of a district and any officer appointed by the Provincial Government to exercise all or any of the functions of a Collector under this Act;

(3) "co-operative society" means a society registered under the Co-operative Societies Act, 1912;

II of 1912.

(4) "derelict tank" means a tank which has been declared to be a derelict irrigation work under section 4;

(5) "period of possession" means the period from the time when possession is first taken of a tank under section 5 or section 6 until the time when possession thereof is restored under section 21;

²(5a) "person having control over a tank" does not include a person by whom the tank is held for a limited time and whose interest in the tank is not transferable;

(6) "prescribed" means prescribed by rules made under this Act;

(7) "tank" means a reservoir, or place which has been used as a reservoir, for the storage of water whether formed by excavation or by the construction of one or more embankments or place where water naturally accumulates, and includes any part of a tank and the banks thereof except such portions of the banks as are homestead garden or orchard lands.

Requisition by Collector to carry out improvements in certain tanks.

3. If the Collector is of opinion that any tank has fallen into disrepair or disuse, he may serve a notice in the prescribed form and manner on the person having control over the tank ³[requiring such person to intimate to him within a period specified in the notice if such person is willing to carry out and in case such person is so willing then,] to carry out within a period specified in the notice such improvements of the tank as the Collector considers necessary for the proper utilisation of the tank for purposes of irrigation.

¹This new clause was inserted by section 2(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²This new clause was inserted by section 2(b) of the same Act.

³The words in square brackets were substituted for the words "requiring him" by section 3 of the same Act.

of 1939.]

(Sections 4, 5.)

4. (1) ¹[If the person having control over the tank does not send any intimation or sends any intimation to the Collector within the period fixed under section 3 that he is not willing to carry out the improvements referred to in that section or if such person sends any intimation to the Collector within such period that he is willing to carry out the improvements but fails to carry out the improvements] to the satisfaction of the Collector within the period specified in the notice issued under that section or within such further period as the Collector may, on application made to him in this behalf, think fit to allow, the Collector may, ²[by a notice served in the prescribed manner on] the person having control over the tank and otherwise published in the prescribed form and manner, declare the tank to be a derelict irrigation work.

Declaration of a tank to be a derelict irrigation work.

(2) Every notice issued under sub-section (1) shall state the boundaries of the tank which is declared to be a derelict irrigation work ³[or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such tank.]

VIII of 1885.

(3) A copy of every notice published under sub-section (1) shall be posted up in a conspicuous place near the tank, together with an intimation that any objections to the ⁴[confirmation] of the notice received by the Collector within one month from the date when it is so posted up, will be taken into consideration.

(4) On the expiry of the said period of one month, the Collector, after considering the objections, if any, shall confirm or withdraw the notice.

(5) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the tank to which it relates is a derelict irrigation work within the meaning of this section.

5. After the notice declaring a tank to be a derelict irrigation work has been confirmed under section 4 the Collector, if he thinks fit, may at any time—

Power to Collector in respect of a derelict irrigation work.

- (a) take possession of the tank and carry out the improvements specified in the notice under section 3, or
- (b) authorise under section 6 a local authority, co-operative society, or any other person interested to take such action.

¹The words and figure in square brackets were substituted for the words and figure "If the improvements referred to in section 3 are not carried out" by section 4(a) (i) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words in square brackets were substituted for the words "by a notice to" by section 4(a) (ii) of the same Act.

³The words and figures in square brackets were added by section 4 (b) of the same Act.

⁴The word in square brackets was substituted for the word "issue" by section 4(c) of the same Act.

(Sections 6, 6A.)

Order for possession of, and improvements in, a derelict tank.

6. (1) Any local authority or co-operative society, or any other person who, in the opinion of the Collector, has an interest in a derelict tank, may, if authorised by the Collector by an order in writing in this behalf, take possession of such tank and carry out the improvements specified in the notice under section 3.

(2) In making an order under sub-section (1) the Collector shall, except for sufficient reason to be recorded in writing, give preference to ¹[the sole owner or] any co-sharer owner of the tank who has submitted an application stating that he is willing to carry out the said improvements or he may make an order in favour of more than one such co-sharer owner jointly.

(3) An order under sub-section (1) shall be in such form and shall contain such particulars and conditions as may be prescribed.

Order for possession of lands adjoining a derelict tank for carrying out improvements in such tank.

6A. (1) If any authorised person considers it necessary for the purpose of carrying out the improvements in a derelict tank to take possession of any land adjoining such tank, he may,—

- (a) if he is the Collector, take possession of such land by order in writing, and
- (b) if he is not the Collector, apply in the prescribed manner to the Collector to be empowered to take possession of such land and the Collector may, if he is satisfied after considering the application that such land is required for carrying out the improvements, empower the authorised person by order in writing to take possession of such land:

Provided that the Collector shall not take possession or empower any authorised person to take possession of such land without giving in the prescribed manner the person in possession of such land reasonable opportunity of making any representation he may like to make and without considering any representation so made.

(2) Every order made under sub-section (1) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such land and shall be in such form as may be prescribed. VIII of 1885.

¹The words in square brackets were inserted by section 5 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²This new section was inserted by section 6 of the same Act.

of 1939.]

(Sections 7, 8.)

7. (1) ¹[If any authorised person other than the Collector—]

Cancellation of order under section 6.

²(a) fails to carry out the improvements to the satisfaction of the Collector in accordance with the conditions referred to in sub-section (3) of section 6,

(b) fails, in the opinion of the Collector, to proceed with the improvements with due diligence or to maintain the tank in proper condition, or

(c) with or without the permission of the Collector gives up possession of the tank or abandons the work of improvement, or

(d) is, in the opinion of the Collector, guilty of any serious negligence or misconduct in relation to the tank or to persons having any right or interest in the tank or in the use of water thereof, or

(e) fails to comply with any order passed under section 26 or section 27,

the Collector may cancel the order made under section 6,

³[as well as any order made under clause (b) of sub-section (1) of section 6A] and thereupon all rights and powers of the said authorised person in respect of the tank ⁴[and in respect of any land of which possession is taken as a result of an order made under clause (b) of sub-section (1) of section 6A] shall cease and determine, and the Collector shall take possession of the tank ⁵[and such land.]

(2) After taking possession of the tank ⁶[and such land] under sub-section (1) the Collector shall either appoint another authorised person to carry out the improvements or carry them out himself.

8. Subject to the provisions of this Act, the Collector or an authorised person shall be entitled to remain in possession of a derelict tank of which possession has been taken under the provisions of this Act for such period not exceeding twenty-five years from the date on which possession of the derelict tank was taken under section 5 or section 6 as may, in the opinion of the Collector, be necessary to recover the amount referred to in sub-section (4) of section 17:

Authorised person to retain possession of a derelict tank for a period not exceeding twenty-five years.

Provided that the Collector may, after considering the views of the authorised person, if any, and for reasons to be recorded in writing, vary such period from time to time subject to the maximum limit of twenty-five years.

¹The words in square brackets were substituted for the words "If any authorised person—" by section 7 (1) (a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²This new clause was substituted for the original clause by section 7 (1) (b) of the same Act.

³The words, figures, letters and brackets in square brackets were inserted by section 7 (1) (c) of the same Act.

⁴The words, figures, letters and brackets in square brackets were inserted by section 7 (1) (d) of the same Act.

⁵The words in square brackets were added by section 7 (1) (e) of the same Act.

⁶The words in square brackets were inserted by section 7(2) of the same Act.

⁷This new section was substituted for the original section by section 8 of the same Act.

(Sections 9—9B.)

Owner to be restored to possession on certain conditions.

9. Notwithstanding anything contained in section 8, the Collector in his discretion may, at any time within the period determined under the said section, restore to possession of the tank the person recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or his successors in interest, provided that—

¹(a) such person pays to the Collector so much of the costs incurred up to that time both by the authorised person in carrying out the required improvements in the tank and by the Collector in carrying out the purposes of this Act in respect of the tank as remains unrecovered after realisation by the authorised person under this Act of the fees referred to in section 17 or of any sum under any lease referred to in section 18, together with interest on the costs so remaining unrecovered at a rate not exceeding six and a quarter *per centum per annum*, and

(b) he undertakes to the satisfaction of the Collector to carry out any remaining improvements specified in the notice under section 3 within such period as the Collector may determine.

Authorised person to retain possession of land adjoining a tank during the period of possession of such tank.

²9A. An authorised person shall be entitled to remain in possession of any land adjoining a derelict tank of which possession is taken under section 6A as long as such person remains in possession of such derelict tank under section 8.

Restoration of possession of land adjoining a derelict tank and the re-taking of possession of such land.

³9B. (1) Notwithstanding anything contained in section 9A, if the person recorded as entitled to possession of any land adjoining a derelict tank in the record-of-rights referred to in section 22 or his successor in interest is not the person recorded as entitled to possession of such derelict tank in the record-of-rights referred to in the said section or his successor in interest, then the Collector may, at the request of the person so recorded as entitled to possession of such land or his successor in interest or of the authorised person at any time after the required improvements in the tank have been completed, by an order in writing, restore the possession of such land to the person so recorded as entitled to possession of such land or to his successor in interest, although the possession of the tank by the authorised person has not terminated, and when the possession of such land is so restored all rights in the land which existed prior to the time when possession was taken of the land under section 6A shall be revived:

Provided that before the Collector takes any action under this sub-section at the request of any person other than the

¹This new clause was substituted for the original clause by section 9 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²New sections 9A, 9B and 9C were inserted by section 10 of the same Act.

of 1939.]

(Section 9C.)

authorised person, the Collector shall give the authorised person a reasonable opportunity of making any representation he may like to make and the Collector shall consider any representation so made.

(2) The person to whom the possession of such land has been restored under sub-section (1) shall not use it in such manner as may cause damage to the banks of the derelict tank or may affect the use of the tank for the purposes of irrigation.

(3) If the person referred to in sub-section (2) fails, in the opinion of the Collector, to comply with the provisions of that sub-section, the Collector may,—

- (a) again empower the authorised person by an order in writing to take possession of such land whereupon the authorised person shall forthwith take possession thereof, or
- (b) if he is the authorised person, himself again take possession of such land by order in writing,

and the authorised person so taking possession of such land again shall retain such possession as long as he remains in possession of the tank.

(4) Every order made under sub-section (3) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such land and shall be in such form as may be prescribed.

VIII of
1885.

9C. When the possession of a derelict tank is restored by the Collector under section 9, the Collector shall at the same time restore the possession of any land adjoining such tank of which possession was taken under section 6A and has not already been restored under sub-section (1) of section 9B or of which possession was retaken under sub-section (3) of section 9B to the person recorded as entitled to possession of such land in the record-of-rights referred to in section 22 or to his successor in interest:

Restora-
tion of
possession
of land
adjoining
a derelict
tank on
the res-
toration of
possession
of such
tank under
section 9.

Provided that where the person to whom the possession of the tank is restored under section 9 is not the person recorded as entitled to possession of such land in the said record-of-rights or his successor in interest, the possession of such land shall not be so restored until the improvements, if any, required to be carried out in the tank under clause (b) of the proviso to section 9 have been completed if the person to whom the possession of the tank is so restored agrees to pay the person so recorded as entitled to possession of such land the compensation which would have been payable by the authorised person under sub-section (1) of section 14A if such authorised person had continued to be in possession of such land.

(Sections 10—12.)

Authorised person not liable to pay rent or compensation.

10. An authorised person shall not be liable to pay any rent or compensation in respect of his possession of a derelict tank ¹[or any land of which possession is taken under section 6A or is retaken under sub-section (3) of section 9B] except as expressly provided in this Act.

Possession by an authorised person not to affect the rights or liabilities of other persons.

11. Save as otherwise expressly provided in this Act, the possession of a derelict tank ²[or of any land adjoining a derelict tank under this Act] by an authorised person shall not affect the right or liability of any other person to receive or pay rent in respect of the said tank ³[or land] or in respect of any right or interest therein:

Provided that where rent ⁴[in respect of the tank] was, at the time when possession was first taken of the tank under this Act, payable by any person solely in respect of a right to use the water of the tank for irrigation purposes the liability to pay such rent shall cease and determine from the date on which such possession was taken.

Authorised person to pay rent to owner and compensation to person other than the owner dispossessed by him.

12. ⁵(1) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of the owner of the tank, the authorised person shall pay, during the period he remains in possession, to such owner at such times and in such manner as may be prescribed, such rent as the Collector, after such inquiry as he thinks fit, may determine:

Provided that where the authorised person is the owner of the tank in actual possession thereof, no such payment of the rent determined by the Collector under this sub-section shall be necessary; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank.

⁶(2) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of any person other than the owner of the tank, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person dispossessed by him such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the tank, and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with his possession.

¹The words, figures, letters and brackets in square brackets were inserted by section 11 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words in square brackets were inserted by section 12(a) of the same Act.

³The words in square brackets were inserted by section 12(b) of the same Act.

⁴The words in square brackets were inserted by section 12(c) of the same Act.

⁵The original section 12 was renumbered as sub-section (2) of that section and before the said section, as so renumbered, new sub-section (1) was inserted by section 13 of the same Act.

of 1939.]

(Sections 13—14A.)

13. Where, at the time of the taking of possession of a derelict tank by an authorised person, any person has a right, on payment of any rent or charge, to catch fish in the tank or to take fruits from trees on, or other produce from, the banks of the tank the authorised person shall, at such times and in such manner as may be prescribed, pay to the said person such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent or charge which the said person continues to be liable to pay to the owner or any tenant of the tank and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with the exercise of his right.

Authorised person to pay compensation to persons who have right to fish in the tank, etc., on payment.

14. (1) Where the bed or any part of the bed of a tank has been leased out to cultivators for agricultural purposes the authorised person shall pay compensation to such cultivators, and thereupon such lease shall be terminated. The amount of compensation payable to each cultivator shall be such amount as the Collector, after such inquiry as he thinks fit, deems fair and equitable ¹* * * :

Authorised person to pay compensation to cultivators who hold a lease of the bed of a tank.

²Provided that the compensation payable to such cultivators shall not be less than an amount which bears to the total amount of *salami*, as determined by the Collector to have been paid for obtaining the lease, the same ratio as the unexpired period of lease bears to the total period of such lease:

³Provided further that where no period of lease is expressly mentioned or agreed to between the parties concerned the total period of lease shall be taken as twelve years.

(2) The amount of compensation determined by the Collector under sub-section (1) shall be paid in the prescribed manner and within the prescribed time to the authorised person by the landlord who granted the lease. If the landlord makes default in such payment the same shall be recoverable from the landlord by the Collector as a public demand and paid by him to the authorised person.

³14A. (1) Where the owner of a derelict tank is not the owner of any land adjoining such tank of which possession is taken under section 6A, or re-taken under sub-section (3) of section 9B, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person in possession of such land at the time of taking or retaking possession thereof such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the land and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of interference with his possession.

Payment of compensation to persons having rights in lands adjoining a tank of which possession is taken under this Act.

¹The words " but not less than the *salami* paid by such cultivator for the lease " were omitted by section 14(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²These provisos were added by section 14(b) of the same Act.

³This new section was inserted by section 15 of the same Act.

(Section 15.)

(2) Where the owner of a derelict tank is also the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall—

- (a) in the case where such land is in the actual possession of the owner thereof, pay at such times and in such manner as may be prescribed to such owner such rent as the Collector, after such inquiry as he thinks fit, may determine:

Provided that where the authorised person is the owner of such land in actual possession thereof, no such payment of the rent determined by the Collector under this clause shall be necessary; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank; and

- (b) in other cases, pay at such times and in such manner as may be prescribed to any person to whom such land has been leased out and who holds such land as lessee at the time such possession is taken or retaken and to every other person having at that time, on payment of any rent or charge, any right in such land, such compensation as the Collector, after such inquiry as he thinks fit, may determine, and such compensation shall not be less than the amount of the rent or charge which the person to whom the compensation is paid continues to be liable to pay to the owner or the tenant of such land and shall be deemed to be a full and complete satisfaction for all loss suffered by every such person as a result of the interference with the exercise of his right.

Permis-
sion of
the autho-
rised
person
necessary
to use or
occupy
the tank,
etc.

15. ¹(1) During the period of possession no person shall without the permission of the authorised person use or occupy the tank or use the water thereof except for drinking and other domestic purposes or catch fish in the tank or take fruits from trees on, or other produce from, the banks of the tank, except such portions of the banks as are homestead, garden or orchard lands.

¹(2) During the period any land, of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, remains in the possession of an authorised person, no person shall without the permission of the authorised person use or occupy such land or take fruits from trees on, or other produce from, such land.

¹The original section 15 was renumbered as sub-section (1) of that section and to the said section, as so renumbered, new sub-section (2) was added by section 16 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

of 1939.]

(Sections 16, 16A.)

16. During the period of possession all rights to use the water of the tank for irrigation purposes shall vest in the authorised person and no person shall use the water of the tank for such purposes except with the permission of the authorised person or in so far as he may be permitted to do so by or under the provisions of this Act.

Rights to use the water of the tank.

16A. (1) When the possession of any tank has been taken under section 5 or section 6, the Collector shall determine in the prescribed manner the maximum area of land to the limits of which irrigation from the said tank may practicably be extended (hereinafter referred to as the maximum irrigation area) and the system and alignment by which and the priority in accordance with which such irrigation can be so extended to the land in that area, and shall publish a notice in the prescribed form and manner defining the limits of the maximum irrigation area and specifying the system, alignment and priority so determined.

Maximum irrigation area.

(2) Every person possessing agricultural land within the maximum irrigation area shall, subject to the provisions of sub-sections (3) and (4), be liable to pay a fee annually during the period of possession to the authorised person at the rate fixed and in the manner provided under section 17 and such liability shall not cease by reason of such person not using water for irrigation purposes from the tank to which the maximum irrigation area relates.

(3) Any person concerned may, within thirty days of the date of the publishing of the notice referred to in sub-section (1), apply in the prescribed form and manner and on payment of the prescribed fee to the Collector for—

- (a) including any land within the maximum irrigation area,
- (b) excluding any land from the maximum irrigation area, and
- (c) exempting any land or part of any land from liability to pay the fees referred to in sub-section (2) on the ground that such land cannot practicably be irrigated from the tank to which the maximum irrigation area relates, or cannot be benefited by such irrigation or that such land is not agricultural land,

and the Collector after giving the applicant a reasonable opportunity of being heard may pass such order as to such inclusion, exclusion or exemption as he thinks fit.

(4) The Collector may, of his own motion at any time after the expiry of thirty days from the date of publishing of the notice referred to in sub-section (1), include within the maximum irrigation area any land which was not agricultural land at the time of publication of such notice but has subsequently been converted into agricultural land, or otherwise revise the limits of the maximum irrigation area or

¹New sections 16, 16A, 16B, 17 and 17A were substituted for the original sections 16 and 17 by section 17 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

(Sections 16B, 17.)

exempt any land or part of any land within such maximum irrigation area from liability to pay the fees referred to in sub-section (2) and the Collector shall modify the list referred to in sub-section (1) of section 16B accordingly:

Provided that before any order for such inclusion, revision or exemption is passed all persons concerned shall, by notice served or published in the prescribed manner, be given a reasonable opportunity of making any representation which they may like to make and the Collector shall consider such representation.

Prepara-
tion of list.

16B. (1) As soon as may be after the Collector has disposed of any applications made under sub-section (3) of section 16A, he shall prepare a list in the prescribed form and manner of the persons who are liable to pay the fee referred to in sub-section (2) of that section and such list shall specify the amount of agricultural land within the maximum irrigation area in respect of which each such person is to pay such fee and the amount of such fee which such person is to pay annually to the authorised person.

(2) The Collector shall publish the list referred to in sub-section (1) and every modification of such list in the manner prescribed and shall, where the authorised person is not the Collector, forward a copy of such list and every modification of such list to the authorised person who shall permit every person whose name is entered in the list or his successor in interest to use the water of the tank for the irrigation of the land of such person as long as the amount of the fee payable by such person is duly paid and not otherwise.

(3) If any dispute arises between persons entered in the list prepared under sub-section (1) as to any matter in respect of the use of water by such persons from the tank for the irrigation of their lands the authorised person or a person authorised in this behalf by the Collector shall decide the dispute and his decision, subject to the provisions of section 26, shall be final.

Payment
and rate
of fees.

17. (1) Every person whose name is included in the list referred to in sub-section (1) of section 16B or his successor in interest shall pay annually and in the prescribed manner and on the dates prescribed to the authorised person or to such person as may be authorised by the Collector in this behalf the fees fixed according to the provisions of this section.

(2) If the fees payable under sub-section (1) are not paid within thirty days from the due date fixed for such payment, interest on the amount of the fees so outstanding shall be payable at the rate of six and one quarter *per centum per annum* calculated from the day on which such payment became due until the date on which the amount of the fees so outstanding is paid or recovered, as the case may be.

(3) The Collector shall fix, in respect of any tank of which possession is taken under this Act and for which the maximum irrigation area has been determined by the Collector, the rate

of 1939.]

(Sections 17A, 18.)

or rates at which fees to be paid to the authorised person under sub-section (1) shall be calculated and different rates may be so fixed for classes of agricultural lands of different descriptions or having different advantages or for lands for the irrigation of which any person had at the time when possession was taken of the tank under this Act the prescriptive right to use water for irrigation.

(4) The rate to be fixed under sub-section (3) shall be such that all costs incurred or likely to be incurred—

- (i) by the authorised person in carrying out the required improvements in the tank; and
- (ii) by the Collector in carrying out the purposes of this Act in respect of the tank;

may be recovered together with interest thereon at a rate, fixed by the Provincial Government, not exceeding six and one quarter *per centum per annum* and together with an amount estimated by the Collector as is likely to be necessary for maintaining the tank in proper condition during the period of possession determined by the Collector under section 8.

(5) The Collector may revise the rate or rates of fees fixed under this section in respect of any tank.

(6) Any sum due to the authorised person under this section shall be recoverable as a public demand.

17A. No person shall obstruct the passage of any water taken for irrigation purposes from any tank in accordance with the system, alignment and priority for taking water as determined by the Collector under sub-section (1) of section 16A.

Passage of water.

18. ²(1) During the period of possession the authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the period of possession any part of the banks of the tank or any right to take fruit from trees on, or other produce from, such banks or any right to rear and catch fish in the tank.

Power of authorised persons to lease out the tank, etc.

²(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, such authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the said period of possession any part of the said land or any right to take fruits from trees on, or other produce from, such land.

²(3) Any sum due to the authorised person under any lease granted under this section shall be recoverable as a public demand.

¹ Vide footnote 1 on page 41 ante.

² The original section 18 was renumbered as sub-section (1) of that section and to the said section, as so renumbered, new sub-sections (2), (3) and (4) were added by section 18 of the Bengal Tanks Improvement West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

(Sections 19—21.)

¹(4) All sums realised or estimated to be realised by the Collector or by the authorised person under any lease granted under this section and any other income derived from the tank including banks thereof and from adjoining lands taken possession of under section 6A and by the sale of silt or otherwise, shall be applied in payment of the costs recoverable under sub-section (4) of section 17.

Bar to transfer of tank except as provided in this Act.

19. Except as provided in this Act, no transfer by sale, gift, will, mortgage, lease or any contract or agreement of any right acquired by an authorised person under the provisions of this Act in respect of a derelict tank, ²[or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B] shall be valid.

Bar to acquisition of

pancy rights in lands leased out under section 18.

³**19A.** Notwithstanding anything contained in the Bengal Tenancy Act, 1885, no person shall acquire any occupancy right in any part of the banks of, or in any land adjoining, a tank leased out to such person under section 18 and no person who has held any part of the banks of any tank under a lease under section 18 at any time since the commencement of this Act shall be deemed to have acquired any occupancy right therein.

VIII of 1885.

Application of the Act to tank improved as a relief measure.

20. (1) When any tank has been re-excavated at the expense of the Provincial Government as a relief measure by the system commonly known as Test or Famine Relief, the Collector may, after giving an opportunity to the person having control over the tank to be heard in the matter, direct that possession of such tank should be taken over by the Collector.

(2) When possession of any improved tank is taken over under sub-section (1) such tank shall be deemed for the purposes of this Act to be a tank taken over and improved under the provisions of this Act and the provisions of this Act shall thereupon apply *mutatis mutandis* to such tank accordingly.

Restoration of possession of tank.

21. (1) When the possession of a derelict tank is terminated in accordance with the provisions of section 8, the tank shall be restored to the possession of the persons who were recorded as entitled to possession thereof in the record-of-rights referred to in section 22, or their successors in interest and any land possession of which was taken under

¹Vide footnote 2 on page 43, *ante*.

²The words, figures, letters and brackets in square brackets were inserted by section 19 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

³This new section was inserted by section 20 of the same Act.

⁴This new section was substituted for the original section by section 21 of the same Act.

⁵This new section was substituted for the original section by section 22 of the same Act.

of 1939.]

(Section 22.)

section 6A but has not been previously restored under section 9B or section 9C or possession of which has been retaken under sub-section (3) of section 9B shall be restored to the possession of the persons who are recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or their successors in interest.

(2) When possession of any tank or land is restored under sub-section (1) or under section 9, all rights in the tank including all rights to use the water for the purposes of irrigation which existed prior to the time when possession was first taken of the tank under section 5 or section 6 and all rights in such land which existed prior to the time when possession of the land was taken under section 6A or retaken under sub-section (3) of section 9B, as the case may be, excepting any rights for which compensation has been paid under section 14, shall be revived.

22. (1) The Collector shall prepare in the prescribed form and manner a record-of-rights in respect of all tanks which are declared to be derelict tanks under this Act, ¹[and a record-of-rights in respect of the lands adjoining such tanks of which possession is taken under section 6A or retaken under sub-section (3) of section 9B] and during the period of possession of any such tank ²for during the period for which any such land remains in the possession of an authorised person] he may, on application or of his own motion, from time to time, add to or alter in the prescribed manner any entry in the record-of-rights ³[in respect of such tank or such land.]

Record-of rights in respect of derelict tanks.

⁴(1a) In the record-of-rights prepared under sub-section (1), there shall be shown in addition to any other details that may be prescribed, the following:—

- (a) the names of all persons from the actual possessor upwards up to and including the owner having permanent transferable right in the tank and adjoining lands together with their addresses, nature and extent of right and interest in the tank and adjoining lands as existing immediately before possession of such tank or land is taken under the provisions of this Act;
- (b) the revenue or rent and cesses, if any, payable by the different persons referred to in clause (a) in respect of the tank or land or if that be not ascertainable then the revenue or rent and cesses in respect of the estate, tenure or holding in which such tank or land is included; and

¹The words, figures, letters and brackets in square brackets were inserted by section 23(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²These words in square brackets were inserted by section 23(b) of the same Act.

³These words in square brackets were added by section 23(c) of the same Act.

⁴This new sub-section was inserted by section 23(d) of the same Act.

(Sections 23—25.)

(c) the numbers of cadastral survey plots together with the names and addresses of possessors of such plots who may have immediately before possession of such tank is taken the prescriptive right of taking water from such tank for irrigation purposes.

(2) Every entry in the record-of-rights referred to in sub-section (1) shall be evidence of the matter referred to in such entry, and shall be presumed to be correct in every particular for the purposes of this Act until it is proved by evidence to be incorrect.

Applica-
tion of
the Act
to certain
tanks.

¹23. (1) The Provincial Government may, by order published in the *Official Gazette*, direct that any tank which may have been improved under the provisions of this Act prior to the commencement of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948, shall, with effect from a date to be specified in such order, be deemed to have been improved in accordance with the provisions of this Act as amended by the last mentioned Act.

West Ben.
Act XXIV
of 1948.

(2) When an order under sub-section (1) is made in respect of any tank, the Collector shall, in the prescribed manner, prepare or revise the list of maximum irrigation area, revise the order regarding period of possession and assessment of fees and take such other action as may be deemed necessary to give effect to such order.

Costs.

²24. All costs incurred by the Collector in carrying out the purposes of this Act in respect of a tank of which possession is taken under section 6 or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B shall be paid by the authorised person at such times and in such manner as may be prescribed, and on default in payment thereof the same shall be recoverable by the Collector as a public demand.

Decision
of dis-
putes.

³25. (1) During the period of possession all disputes relating to the exercise of any rights in respect of a tank or the use of the water thereof by the authorised person * * * shall be decided by the Collector in such manner as may be prescribed.

(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, all disputes relating to the exercise of any rights in respect of such land shall be decided by the Collector in such manner as may be prescribed.

¹This new section was substituted for the original section by section 24 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²This new section was substituted for the original section by section 25 of the same Act.

³The original section 25 was renumbered as sub-section (1) of that section, and in the said section, as so renumbered, the words, figures and brackets "or among any other persons referred to in sub-section (2) of section 16" were also omitted by section 26(a) of the same Act.

⁴This new sub-section was added by section 26(b) of the same Act.

of 1939.]

(Sections 26—30.)

26. Any person aggrieved by any action ¹[or decision] of an authorised person, other than the Collector, ²[or any person authorised by the Collector] may appeal to the Collector who after giving such authorised person an opportunity to be heard in the matter, shall pass such order thereon as he thinks fit.

Appeal against action of authorised person.

27. (1) Any person aggrieved by any order passed by a Collector, other than the Collector of the district, under this Act may appeal in the prescribed manner to the Collector of the district.

Other appeals.

(2) Any person aggrieved by any order passed, on appeal or otherwise, by the Collector of the district may appeal in the prescribed manner to the Commissioner.

(3) Any person aggrieved by any order passed by a Commissioner under this Act may appeal in the prescribed manner to the Board of Revenue:

Provided that where an order passed by the Collector of the district on appeal has been confirmed by the Commissioner no appeal under this sub-section shall lie except on a point of law.

28. Notwithstanding anything contained in any other Act the procedure to be followed by the Collector of the district, Commissioner or Board of Revenue in any proceedings under section 27 shall be in accordance with rules made under this Act.

Procedure in proceedings under section 27.

29. No decree nor order of a Civil Court shall operate to disturb, curtail or otherwise modify the possession under this Act of a tank ³[or of any land adjoining such tank] by the authorised person, or, during the period of possession, ⁴[of such tank or during the period for which any such land remains in the possession of an authorised person] to annul or alter any order or decision of the Collector or any other Revenue authority made or purporting to have been made under the provisions of this Act.

Order of Civil Court not to operate during period of possession.

30. ⁵(1) No suit shall lie in any Civil Court for compensation in respect of any injury, damage or loss resulting from anything done under this Act.

Bar to jurisdiction of Civil Courts.

⁵(2) No suit or other proceedings shall lie against the Collector, other authorised person or any officer or worker employed by or under the Collector for anything in good

¹The words in square brackets were inserted by section 27(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words in square brackets were inserted by section 27(b) of the same Act.

³The words in square brackets were inserted by section 28(a) of the same Act.

⁴The words in square brackets were inserted by section 28(b) of the same Act.

⁵The original section 30 was renumbered as sub-section (1) of that section and after the said section, as so renumbered, new sub-section (2) was added by section 29 of the same Act.

(Sections 31—36.)

faith done or intended to be done or purporting to be done under the provisions of this Act or any rule made thereunder.

Power to enter land to make survey, etc.

31. The Collector, subject to any rules made under this Act, may at any time enter upon any land with such officers or servants as he considers necessary, and make a survey or take measurements thereof or do any other acts which he considers to be necessary for carrying out any of his duties under this Act.

Power to compel production of statements and documents.

32. (1) Subject to rules made under this Act the Collector may, for the purposes of this Act, by notice, require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any land or tank at a time and place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Act XLV
of 1860.

Power to enforce attendance of witnesses and production of documents.

33. For the purposes of an inquiry under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including any of the persons interested in the tank¹ [or in any land adjoining such tank] and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

Act V of
1908.

Power to authorise subordinate officer to exercise Collector's powers.

34. The Collector may, by order in writing, authorise any officer subordinate to him to exercise the powers of the Collector under clause (a) of section 5² [or clause (a) of sub-section (1) of section 6A, or clause (b) of sub-section (3) of section 9B] or under section 31.

Penalty.

35. Whoever contravenes any of the provisions of section 15, ³[section 16 or section 17A] shall be punished with fine which may extend to one hundred rupees.

No reduction of revenue for anything done under this Act.

36. The proprietor of a tank⁴ [or of any land adjoining a tank] shall not be entitled to claim, on account of anything done under the provisions of this Act, any reduction in the revenue payable by him to the Government.

¹The words in square brackets were inserted by section 30 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words, figures, letters and brackets in square brackets were inserted by section 31 of the same Act.

³The words, figures and letters in square brackets were substituted for the words, figures and brackets "or sub-section (1) of section 16" by section 32 of the same Act.

⁴The words in square brackets were inserted by section 33 of the same Act.

of 1939.]

(Section 37.)

37. (1) The Provincial Government may make rules for carrying out the purposes of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the forms of notices under section 3, sub-section (1) of section 4 and sub-section (1) of section 23, of ¹[orders under sub-section (1) of section 6, sub-section (1) of section 6A and sub-section (3) of section 9B], and of record-of-rights under sub-section (1) of section 22;
- (b) the manner of serving notice under section 3, ²[sub-section (1) of section 4] and sub-section (1) of section 23 and of publishing notice under sub-section (1) of section 4;
- (c) the particulars and conditions to be specified in an order under sub-section (1) of section 6;
- ³(cc) the manner of making an application under clause (b) of sub-section (1) of section 6A and of giving reasonable opportunity to the person in possession of the land to make any representation under the proviso to the said sub-section;
- (d) the time and manner of payment of compensation under section 12, section 13, ⁴[sub-section (2) of section 14 and sub-sections (1) and (2) of section 14A], and of costs under section 24;
- ⁵(dd) the manner of determining the maximum irrigation area and the system, alignment and priority of irrigation in that area, and the form and the manner of publishing the notice defining the limits of the maximum irrigation area and the system, alignment and priority of irrigation in that area, under sub-section (1) of section 16A and the form and manner of the application and the fee payable under sub-section (3) of that section;
- ⁶(ddd) the manner of service and publication of notice referred to in the proviso to sub-section (4) of section 16A;
- ⁷(dddd) the form of the list and the manner of its preparation under sub-section (1) of section 16B and the manner of publication of the list and every modification thereof under sub-section (2) of that section;

¹The words, figures and brackets in square brackets were substituted for the words, figures and brackets "order under sub-section (1) of section 6" by section 34(1) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words, figures and brackets in square brackets were inserted by section 34(2) of the same Act.

³This new clause was inserted by section 34(3) of the same Act.

⁴The words, figures, letter and brackets in square brackets were substituted for the words, figures and brackets "and sub-section (2) of section 14" by section 34(4) of the same Act.

⁵New clauses (dd), (ddd), (dddd) and (dddddd) were inserted by section 34(5) of the same Act.

(Section 37.)

- ¹(*ddddd*) the manner and the dates of payment of fees under sub-section (1) of section 17;
- (*e*) the manner of preparing the ²[records-of-rights] under sub-section (1) of section 22, and of adding or altering any entry therein;
- ³(*ee*) the manner of preparation and revision of the list of maximum irrigation area referred to in sub-section (2) of section 23;
- (*f*) the manner of deciding disputes under ⁴[sub-sections (1) and (2) of section 25];
- (*g*) the manner of making an appeal and the procedure to be followed in any proceedings under section 27;
- (*h*) the procedure and conduct of the Collector and of officers and servants referred to in section 31;
- (*i*) the exercise of powers under sub-section (1) of section 32 to enforce the making and delivery of statements and ⁵production of documents.

¹*Vide* footnote 5 on page 49, *ante*.

²The word in square brackets was substituted for the word "recrd-of-rights" by section 34(6) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

³This new clause was inserted by section 34(7) of the same Act.

⁴The words, figures and brackets in square brackets were substituted for the word and figures "section 25" by section 34(8) of the same Act.

Bengal Act V of 1940.

THE BENGAL JUTE REGULATION ACT, 1940.

CONTENTS.

Section.

1. Short title and extent.
2. Definitions.
3. Preparation of record of lands on which jute was grown in any year.
4. Disposal of objections against entries in the record.
5. Preparation of final record.
6. Constitution of Union Jute Committees.
7. Power to procure information of stocks of raw jute and jute products.
8. Constitution of Advisory Board.
9. Notification of area on which jute may be grown.
10. Allotment of areas, and issue of licences, to growers of jute.
11. Modification of licence by Collector.
12. Appeals.
13. Bar to jurisdiction of Courts.
14. Examination and registration of areas of land on which jute is grown in any year.
15. Production of licence.
16. Penalties.
17. Destruction of jute grown without a licence.
18. Certain persons deemed to be public servants.
19. Certain proceedings deemed to be judicial proceedings.
20. Indemnity.
21. Power of Director of Land Records to delegate authority.
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23. Power to make rules.

Bengal Act V of 1940.¹

THE BENGAL JUTE REGULATION ACT, 1940.

[20th April, 1940.]

An Act to provide for the regulation of the growing of jute, and for that purpose to provide for the preparation of a record of the lands on which jute was grown in any year.

WHEREAS it is expedient to provide for the regulation of the growing of jute, and for that purpose to provide for the preparation of a record of the lands on which jute was grown in any year;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Jute Regulation Act, 1940. Short title
and extent.

~~Supplement.~~
Supplement.

Pages 53-66—

Strike out the Bengal Jute Regulation Act, 1940 (Ben. Act V of 1940), and insert the following note, namely:—

(Repealed by West Ben. Act XXXI of 1950, section 2.)

[No. 45, dated the 2nd December, 1950.]

- (3) "Director of Land Records" means the person appointed by the Provincial Government to be the Director of Land Records or to exercise all or any of the functions of the Director of Land Records under this Act, and includes every person who for the time being performs the duties of that office;
- (4) "grow," with its grammatical variations, when used in relation to jute, includes "sow" and the grammatical variations thereof, irrespective of whether the jute is harvested or not;
- (5) "grower of jute" means any person who, either for his own consumption or for sale, and whether by himself or by members of his family or by hired labour or by *adhiars* or *bargadars* or *bhagdars*, grows jute in any year on any land in his possession;

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary* of the 17th November 1939; the report of the Select Committee was presented to the Assembly on the 12th December, 1939; for Proceedings of the Assembly, see the Proceedings of the meetings of the Bengal Legislative Assembly, held on the 30th November, 8th, 12th and 19th December, 1939, 26th, 27th, 28th and 29th February and 4th March, 1940; for Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 11th, 19th, 20th and 27th March, 1940.

²See foot-note 2 on page 1 *ante*.

(Section 3.)

- (6) "jute" means the plant known botanically as belonging to the *genus Corchorus*, and includes all the species of that *genus*, whether known commonly as *pat*, *kosta*, *nalia* or by any other name, and also means the plant known botanically as *hibiscus cannabinus* and commonly as *mesta*;
- (7) "land" includes any land covered with water at any time of the year ¹[but does not include any land on which, with the written permission of the Provincial Government or of a servant of the Crown authorized by the Provincial Government in this behalf, jute is grown in any year for *boni fide* experimental or demonstrational purposes];
- (8) "licensee" means a person to whom there has been issued under section 10 a licence which is still in force;
- (9) "notification" means a notification published in the *Official Gazette*;
- (10) "prescribed" means prescribed by rules made under this Act;
- (11) "recording officer" includes the Director of Land Records and any person appointed by him to perform all or any of the duties of a recording officer under this Act;
- (12) "rules" means rules made under this Act;
- (13) "Subdivisional Magistrate" means the Magistrate in charge of the subdivision of the district;
- (14) "union" includes a local area or group of dwellings declared to be a village under the Village Chaukidari Act, 1870, a village or group of villages constituted as a union under the Bengal Local Self-Government Act of 1885, and a local area declared to be a union under the Bengal Village Self-Government Act, 1919; and
- (15) "union board" includes a *panchayat* appointed under the Village Chaukidari Act, 1870, a union committee constituted under the Bengal Local Self-Government Act of 1885, and a union board established under the Bengal Village Self-Government Act, 1919.

Ben. Act
VI of 1870.Ben. Act
III of 1885.Ben. Act
V of 1919.Ben. Act
VI of 1870.Ben. Act
III of 1885.Ben. Act
V of 1919.

Prepara-
tion of
record of
lands on
which jute
was grown
in any
year.

3. (1) The Provincial Government may, by notification, direct that, for the whole of ²[West Bengal] or for such part thereof as may for any special reason or purpose be specified in the notification, a record shall be prepared of all lands on which jute was grown by any grower of jute in such year as may be specified in the notification, and the Director of Land Records shall thereupon, in the prescribed manner and form, cause such a record to be prepared.

¹These words were added by s. 2 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940).

²See foot-note 2 on page 1, *ante*.

of 1940.]

(Section 3.)

¹[(2) The Provincial Government may, by notification, also direct that, in the area specified in the notification or in any part of such area, any grower of jute may, within the period, in the manner and to the authority specified in sub-section (2) of section 4, apply to have entered in the record the nature of any land in his possession on which no crop other than jute can be grown.

(3) The Provincial Government may, by notification, further direct that, in the area specified in the notification or in any part of such area, any grower of jute may, within the period, in the manner and to the authority specified in sub-section (2) of section 4, apply to have entered in the record any land in his possession on which, in any of the three years immediately preceding the years specified in the notification, he or his predecessor in interest grew jute in excess of the total area of land on which he grew jute in the year specified in the notification.]

(4) For the purposes of preparing the record referred to in sub-section (1), a recording officer, or any servant of the Crown authorized by the Collector by general or special order in this behalf, may enter upon, examine in such manner as he thinks fit, and make a survey of, any land on which he has reason to believe that jute was grown in the said year by any grower of jute and, subject to the rules, may—

(a) publish, in the prescribed manner and form, a notice requiring any grower of jute and any other person whose attendance appears to him to be necessary, to attend before him at the time and place specified in the notice and to furnish such information as he may require or to produce any document specified in the notice, and

(b) receive and record any information given, and examine any document produced, by any grower of jute.

(5) After publication of a notice under sub-section (4), every grower of jute and other person to whom such notice is directed shall, either personally or by an authorized agent, attend before the recording officer at the time and place specified in the notice and shall, as the case may be, furnish such information as the recording officer may require or produce such document as may be specified in the notice.

Explanation.—For the purposes of this sub-section the expression “authorized agent” means a person employed, with authority expressed or implied, to represent before a recording officer a grower of jute or other person to whom a notice under sub-section (4) has been directed.

(6) No person shall be entitled to compensation for any damage done in good faith to any land or to any crop thereon in connection with any entry, examination or survey made under sub-section (4).

¹Sub-sections (2) and (3) were substituted for the original sub-sections by s. 3 of the Bengal Jute Regulation (Amendment) Act 1940 (Ben. Act XIV of 1940).

(Sections 4—6.)

Disposal of
objections
against
entries in
the record.

4. (1) The recording officer shall, in the manner prescribed, furnish free of cost to every grower of jute a copy of the entry standing against his name in the record prepared under section 3.

(2) Within such period, in such manner and to such authority as may be prescribed, any person may make an objection against the correctness of any entry in the record and any grower of jute referred to in sub-section (2) or sub-section (3) of section 3 may make the application referred to respectively in those sub-sections, and such objection and application shall, in the prescribed manner, be heard by such authority, whose decision thereon shall, for the purposes of this Act, be final.

Prepara-
tion of
final
record.

5. (1) When any objection or application made under sub-section (2) of section 4 is allowed, either wholly or in part, the recording officer shall, in the manner prescribed, correct the record accordingly and, after the disposal of all such objections and applications, shall, in the manner prescribed, authenticate the record so corrected, and the record so authenticated shall, in respect of the area for which it is prepared, be the final record of all lands on which jute was grown in that year by any grower of jute:

Provided that the Provincial Government may, in any year subsequent to that in respect of which the final record is prepared, direct that any correction so made in the final record in respect of an application made under sub-section (2) of section 4 ¹[by any grower of jute referred to in sub-section (2) of section 3] shall, in the prescribed manner, be examined and, if necessary, be revised:

²[Provided further that the Collector, on his own initiative at any time, or on receipt of an application made in the prescribed manner and on payment of the prescribed fee by any grower of jute within one year from the date on which the record is so authenticated, may examine the final record and if, after such inquiry as he thinks fit, he is satisfied that any entry in the final record is incorrect or that any entry has been improperly omitted from the final record, he shall direct that the final record be revised accordingly.]

(2) The recording officer shall send the final record to the Union Jute Committee constituted under sub-section (1) or sub-section (5) of section 6 for the local area to which the record relates, or to such servant of the Crown as may have been authorized under sub-section (5) or appointed under sub-section (7) of section 6 to perform the functions of such Committee in such local area.

Constitu-
tion of
Union Jute
Com-
mittees.

6. (1) The Provincial Government shall, by notification, declare the local areas in which there shall be constituted Union Jute Committees, and thereupon the Collector shall, as soon as may be, cause to be constituted such a Committee for each such local area within his jurisdiction.

¹Inserted by s. 4 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940).

²Inserted, *ibid*.

of 1940.]

(Section 7.)

(2) Each Committee shall consist of a Chairman and not more than six other members, of whom three shall be growers of jute within the area of the jurisdiction of the Committee.

(3) The Chairman and other members of the Committee shall be appointed by the Collector or by such servant of the Crown other than a Police-officer, as may, subject to the rules, be authorized by the Collector by general or special order in this behalf.

(4) The Committee shall be subject to the control and supervision of the Collector and of any servant of the Crown authorized by the Collector by general or special order in this behalf.

(5) The Collector may, at any time and for reasons to be recorded by him in writing, dissolve a Committee, and may thereupon either cause a fresh Committee to be [constituted] or, may, subject to the rules, authorize any servant of the Crown other than a Police-officer to perform all or any of the functions of the Committee.

(6) The Collector may, at any time and for reasons to be recorded by him in writing, cancel the appointment of the Chairman or any other member of the Committee, and shall thereupon cause to be appointed a fresh Chairman or a fresh member as the case may be.

(7) For any area in respect of which a Committee has not been constituted, the Provincial Government may, by notification, appoint any servant of the Crown other than a Police-officer to perform such area all or any of such functions of a Committee as may be specified in the notification.

(8) The procedure to be followed by, the quorum at a meeting of, and the manner of filling casual vacancies among members of a Committee shall be such as may be prescribed.

(9) Subject to the provisions of sub-sections (5) and (6), the term of a Committee constituted under this section shall be two years from the date on which it is constituted.

7. (1) The Provincial Government may, at any time and by notification, direct any person to submit, by such date as may be specified in the notification, a statement showing in the prescribed form the quantity of jute and manufactured jute products which was in the possession, or under the control, of such person on such date as may be specified in the notification.

Power to procure information of stocks of raw jute and jute products.

(2) Subject to the rules any servant of the Crown, other than a Police-officer, authorized by the Provincial Government by general or special order in this behalf may, within the local limits for which he is so authorized and for carrying out the purposes of this section,

(a) enter and remain in any premises in which he has reason to believe that there is jute or any jute product,

¹Substituted by s. 5 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940) for the word "appointed".

(Sections 8, 9.)

- (b) make such examination of such premises and of any record or register maintained therein and relating to jute or any jute product, and take on the spot or otherwise such evidence of any person, as he may deem necessary for carrying out the purposes of this section, and
- (c) require any person having custody of any such record or register to produce it:

Provided that no person shall be required under this subsection to answer any question or give any evidence tending to criminate himself.

Constitu-
tion of
Advisory
Board.

8. (1) The Provincial Government shall constitute an Advisory Board, which shall consist of—

- (a) one member appointed by the Provincial Government to represent the Provincial Government,
- (b) four members appointed by the Provincial Government to represent respectively the manufacturers, *pucca* balers, *kutch*a balers and shippers of jute in ¹[West Bengal], and
- (c) six members appointed by the Provincial Government to represent the growers of jute in ¹[West Bengal];

and the Chairman of the Advisory Board shall be the member so appointed to represent the Provincial Government.

(2) The term of office of, the procedure to be followed by, the quorum at a meeting of, and the manner of filling casual vacancies among, members of the Advisory Board shall be such as may be prescribed.

(3) The duties of the Advisory Board shall be—

- (a) to advise the Provincial Government in respect of the matters referred to in section 9, and
- (b) to advise the Provincial Government in regard to any matter concerning the regulation of the growing of jute, which may be referred to it by the Provincial Government from time to time.

(4) The Advisory Board shall have such powers to compel attendance of witnesses and production of documents as may be prescribed.

Notifica-
tion of
area on
which jute
may be
grown.

9. The Provincial Government may, after consulting the Advisory Board constituted under section 8 and by notification, declare the proportion which the total area of land on which jute may be grown, in the whole of ¹[West Bengal] or in such part thereof as may for any special reason or purpose be specified in the notification and in such year as may be specified in the notification, shall bear to the total recorded area of land on which jute was grown in that locality in such previous year or years as may be specified in the notification.

¹See foot-note 2 on page 1, *ante*.

of 1940.]

(Section 10.)

10. (1) On the publication of a notification under section 9, every Committee constituted under sub-section (1) or sub-section (5) of section 6, and every servant of the Crown authorized under sub-section (5) or appointed under sub-section (7) of that section to perform the functions of a Committee in this behalf, shall, in the prescribed manner and within the prescribed period, allot to every grower of jute who is within the jurisdiction of such Committee or of such servant of the Crown, as the case may be, and is named in the final record relating to the previous year or years referred to in the said notification, or to the successor in interest of any such grower of jute, an area of land which bears, to the area of land entered in the said final record against the name either of such grower of jute or of his predecessor in interest, the same proportion as that declared by the said notification, and shall, after giving notice in such form and manner as may be prescribed, issue to each such grower of jute or to his successor in interest, in such form as may be prescribed, a licence specifying the area so allotted and the land comprised within such area:

Allotment of areas, and issue of licences, to growers of jute.

Provided that the area allotted to any person under this sub-section shall not be less than the area of ¹[the land in his possession which] is entered in the record as comprising land on which no crop other than jute can be grown.

²[Provided further that the provisions of this sub-section shall apply to the issue of a licence required in consequence of any revision of the final record directed under sub-section (1) of section 5 or in compliance with any order made under sub-section (1) of section 12.]

(2) When a notice is given under sub-section (1), any person to whom an allotment of area has been made under that sub-section, and who desires to grow jute on any land not entered against the name of himself or his predecessor in interest in the record relating to the previous year or years referred to in the notification under section 9, may, in such manner as may be prescribed and together with a certified copy of the entry relating to such land in the finally published record of rights, apply to the Committee or to a servant of the Crown authorised under sub-section (5) or appointed under sub-section (7) of section 6 for permission to grow jute on the whole or such portion of such land as may be specified in the application; and the Committee or such servant of the Crown, if satisfied that permission should be granted, shall specify such land in the licence to be issued in conformity with the provisions of sub-section (1):

Provided that the total area of land specified in the licence shall in no case exceed the total area of land allotted to the applicant under sub-section (1).

¹Substituted by s. 6 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940) for the words "such land of the holding of such person as".

²Inserted, *ibid.*

(Sections 10A, 11.)

(3) Every licence issued under sub-section (1) shall be issued in duplicate, shall bear the date of its issue and shall be signed and sealed in the prescribed manner, and the duplicate copy of every licence shall be retained by the Committee or ¹[servant of the Crown] issuing the licence.

(4) In any year in respect of which a declaration has been published under section 9, no grower of jute shall grow jute except in conformity with a licence issued under sub-section (1).

Special provision for licences in any particular year.

²10A. (1) Notwithstanding anything contained elsewhere in this Act, the Provincial Government may, in any year, by notification direct that every licence issued under sub-section (1) of section 10 in the immediately preceding year shall be deemed to be a licence issued under that sub-section for the growing of jute in the year specified in the notification.

(2) When a notification under sub-section (1) has been issued, in any year, by the Provincial Government, any grower of jute or his successor in interest, who was entitled to have a licence issued to him in the immediately preceding year under sub-section (1) of section 10, but who had not taken out such licence, shall be entitled to have a licence issued to him, as if the immediately preceding year had not expired and the licence so issued, shall, for the purpose of sub-section (1), be deemed to be a licence issued under sub-section (1) of section 10 in the immediately preceding year.

(3) For the avoidance of doubt it is hereby declared that it shall not be necessary for the Provincial Government to constitute an Advisory Board under section 8 or to consult any such Board under section 9 before issuing a notification under sub-section (1).

Modification of licence by Collector.

11. ³[(1)] If for any reason a licensee is prevented from growing jute on any portion of the land specified in the licence, and desires to grow jute on any land not so specified, he may apply to the Collector in writing, stating his reasons, and the Collector, if satisfied, may modify the licence accordingly:

Provided that—

- (i) the total area of land specified in the licence so modified shall in no case exceed the total area of land originally specified in the licence, and
- (ii) pending the disposal of an application under this section, no jute shall be grown on any land not originally specified in the licence.

¹Substituted by s. 6 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940) for the word "person".

²Inserted by s. 2 of the Bengal Jute Regulation (West Bengal Amendment) Act, 1948 (West Bengal Act XVI of 1948).

³Section 11 was renumbered as sub-section (1) of section 11 by s. 7 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940).

of 1940.]

(Sections 12—15.)

¹[(2) If, in consequence of any revision of the final record directed under sub-section (1) of section 5 or in compliance with any order made under sub-section (1) of section 12, it is required to modify any licence, the Collector shall modify the licence accordingly.]

12. (1) A licensee or any person to whom a licence has been refused may, in such manner and on payment of such fee as may be prescribed, appeal to the Collector against an order made, or in respect of a licence issued or refused under section 10, on the ground that such order has not been made or that such licence has not ²[been] issued or refused in accordance with the provisions of that section, and the decision of the Collector in respect of any such appeal shall be final. Appeals.

(2) An appeal under sub-section (1) shall be preferred within fifteen days of the date of the order or of the issue or refusal of the licence complained of, and pending the disposal of such appeal, no jute shall be grown on any land not originally specified in the licence.

13. No allotment of area specified in any licence, and no order granting or refusing to grant or modifying a licence, shall be called in question in any Court or in any manner save as provided in this Act. Bar to jurisdiction of Courts.

14. (1) The Provincial Government may, by notification, direct that an examination shall be made of all lands on which jute was grown in any year by any grower of jute, and the Director of Land Records shall thereupon, in the prescribed manner and form, cause such an examination to be made. Examination and registration of areas of land on which jute is grown in any year.

(2) The Director of Land Records or any person authorized by him by general or special order in this behalf, shall in the prescribed manner report to the Subdivisional Magistrate every case in which jute has been grown in the said year on any land not so specified in a licence issued under section 10.

(3) For the purpose of making the examination referred to in sub-section (1), the Director of Land Records and any person authorized by him by general or special order in this behalf may enter upon, examine in such manner as he thinks fit, and make a survey of, any land on which he has reason to believe that jute was grown in the said year, and may, subject to the rules, exercise all or any of the powers conferred upon a recording officer by sub-section (4) of section 3.

(4) No person shall be entitled to compensation for any damage done in good faith to any land or to any crop thereon in connection with any entry, examination or survey made under sub-section (3).

15. Every person to whom a licence has been issued under section 10 shall, on demand by the Director of Land Production of licence.

¹Added by s.7, of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940.)

²Inserted by s. 8, *ibid.*

(Section 16.)

Records or by the Collector or by any person authorized by the Director of Land Records or the Collector by general or special order in this behalf, produce such licence for inspection.

Penalties. **16.** Notwithstanding anything contained in any other law for the time being in force—

(1) whoever—

(a) intentionally fails to comply with a notice published under clause (a) of sub-section (4) of section 3 or under sub-section (3) of section 14, or

(b) intentionally makes any false statement with intent to deceive, or intentionally produces any false document before, a recording officer or a Committee or a servant of the Crown authorised under sub-section (5) or appointed under sub-section (7) of section 6 or a person making an examination under section 14, or

(c) in any proceeding under this Act, falsely personates another and in such assumed character makes any statement or produces any document or fraudulently does any other act, or

(d) without obtaining a licence in the prescribed form or in contravention of any of the provisions of a licence, grows jute on any area of land not specified in such licence in any year in respect of which a declaration has been made by the Provincial Government under section 9, or

(e) voluntarily obstructs or prevents a recording officer, or any person authorized by the Director of Land Records under sub-section (3) of section 14, or any servant of the Crown, from entering upon, examining or making a survey of, any land for the purposes of this Act or from performing any of the duties imposed by this Act, or

(f) abets any act punishable under this clause,

shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to three hundred and fifty rupees, or with both;

(2) no prosecution for an offence punishable under clause (1), shall be instituted except with the previous sanction of the Subdivisional Magistrate and upon complaint by a recording officer or by a servant of the Crown authorized by the Collector under sub-section (4) of section 3 or by a person authorised by the Director of Land Records under sub-section (3) of section 14; and

of 1940.]

(Sections 17—18.)

- (3) whoever intentionally fails to comply with a notification issued under sub-section (1) of section 7, or voluntarily obstructs or prevents any servant of the Crown authorized under sub-section (2) of that section from entering any premises in which there is jute or any jute product, or, having custody of any record or register maintained in such premises and relating to jute or any jute product, refuses or, without sufficient cause, fails to produce such record or register on being so required by such servant of the Crown, shall, upon complaint by such servant of the Crown and on conviction, be punishable with imprisonment, which may extend to six months, or with fine which may extend to two hundred and fifty rupees, or with both.

17. When any person has been convicted under sub-clause (d) of clause (1) of section 16, the Court may direct that the jute in respect of which the offence was committed shall be destroyed, and may further order that the cost of such destruction shall be recoverable from such person as if it were a fine.

Destruction of jute grown without a licence.

17A. (1) Notwithstanding anything contained elsewhere in this Act, the Provincial Government may, by notification, direct that jute may be grown on any land not included in the final record prepared under section 5, if such land has not been used for growing any crop during the jute growing season within the previous three years.

Growing of jute on land not used for growing jute within three previous years.

(2) When jute is grown on any land in accordance with the provisions of sub-section (1), it shall not be necessary to obtain a licence under sub-section (1) of section 10.

17B. Notwithstanding anything contained elsewhere in this Act, the Director of Land Records shall, on application made to him in this behalf in the prescribed manner, include any land on which jute may have been grown under the provisions of sub-section (1) of section 17A, in the final record authenticated under section 5 and thereafter the provisions of this Act shall apply to such land as if such land had been included in the final record originally authenticated under section 5.

Inclusion in the final record of land on which jute is grown under section 17A.

18. The Chairman and every other member of a Committee, a recording officer, and any person authorized by the Collector or the Director of Land Records for any of the purposes of this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons deemed to be public servants.

Act XLV
of 1960.

¹Inserted by s. 3 of the Bengal Jute Regulation (West Bengal Amendment) Act, 1948 (West Bengal Act XVI of 1948).

²The figure "1860" was omitted by s. 9 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940).

(Sections 19—23.)

Certain proceedings deemed to be judicial proceedings.

19. Proceedings under sections 3, 4, 5, 10, 11, 12 and 14 shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code^{1*}; but notwithstanding anything contained in any other law, no prosecution for an offence punishable under that section in respect of any such proceedings shall be instituted except with the previous sanction of the Subdivisional Magistrate.

Act XLV
of 1860.

Indemnity.

20. No suit, prosecution or legal proceeding shall, in respect of anything done or intended to be done in good faith under this Act or the rules, lie against any Chairman or other member of a Committee or any recording officer or any servant of the Crown or any person authorized by the Director of Land Records for any of the purposes of this Act.

Power of Director of Land Records to delegate authority.

21. Subject to the control of the Provincial Government, the Director of Land Records may delegate to any person subordinate to him the exercise of all or any of the powers conferred, and the performance of all or any of the duties imposed, upon him by this Act or the rules.

Realization and disposal of fees.

22. All fees payable under this Act shall be realized and disposed of in the manner prescribed.

Power to make rules.

23. (1) The Provincial Government may, ²[after previous publication,] make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Provincial Government may make rules to provide for all or any of the following matters:—

- (a) the appointment and duties of recording officers;
- (b) the manner and form in which the record referred to in sub-section (1) of section 3 shall be prepared;
- (c) the exercise of the powers conferred by clauses (a) and (b) of sub-section (4) of section 3;
- (d) the manner of publication of the notice published under sub-section (4) of section 3, and the form of such notice;
- (e) the manner of furnishing a copy of the entry in the record under sub-section (1) of section 4;
- (f) the period allowed for the making of, and the manner of making, objections and applications under sub-section (2) of section 4;
- (g) the appointment of authorities to hear objections and applications under sub-section (2) of section 4, and the manner of hearing such objections and applications;

¹The figure "1860" was omitted by s. 10 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940).

²Inserted by s. 11, *ibid.*

of 1940.]

(Section 23.)

- ¹[(*h*) the manner of correcting and authenticating the record under sub-section (1) of section 5, the manner of applying for the revision of the final record, the fee payable for making such an application, and the manner of examining and revising the final record under that sub-section;].
- (*i*) the constitution of a Committee and the appointment of the members and Chairman thereof;
- (*j*) the procedure to be followed by, the quorum at a meeting of, and the manner of filling casual vacancies among, members of the Committee;
- (*k*) the exercise by the Collector of the powers conferred upon him by section 6;
- (*l*) the form of the statement referred to in sub-section (1), and the exercise of the powers conferred by sub-section (2), of section 7;
- (*m*) the term of office of, the procedure to be followed by, the quorum at a meeting of, and the manner of filling casual vacancies among, members of the Advisory Board constituted under section 8, and the powers of the Advisory Board to compel attendance of witnesses and production of documents;
- (*n*) the publication of a notification under section 9;
- (*o*) the manner of making an allotment under sub-section (1) of section 10, and the period within which such allotment shall be made;
- (*p*) the manner of giving notice of, and the form and manner of issue of, a licence under sub-section (1) of section 10, and the manner of signing and sealing such licence or a copy thereof;
- (*q*) the manner of making an application under sub-section (2) of section 10 ²[or under section 17B];
- (*r*) the manner of, and the fee payable for, preferring an appeal under section 12;
- (*s*) the manner of making an examination under section 14, and the exercise of the powers conferred by sub-section (3) of that section;
- (*t*) the manner of reporting to the Subdivisional Magistrate under sub-section (2) of section 14 and the form of such report; and
- (*u*) the manner of realization and disposal of fees payable under this Act.

¹Substituted by s. 11 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940) for the original clause (*h*).

²Added by s. 4 of the Bengal Jute Regulation (West Bengal Amendment) Act, 1948 (West Bengal Act XVI of 1948).

(Section 23.)

(3) In making any rule under this section the Provincial Government may direct that any person committing a breach thereof shall, on conviction by a Court, be punishable with fine, which may extend to fifty rupees, and where the breach is a continuing one, with a further fine which may extend to ten rupees for every day, after the first, during which the breach ¹[continues subsequent to such conviction].

¹Substituted by s. 11 of the Bengal Jute Regulation (Amendment) Act, 1940 (Ben. Act XIV of 1940), for the word "continued".

Bengal Act VII of 1940¹

THE INLAND STEAM-VESSELS (BENGAL AMENDMENT) ACT, 1940.

[25th April, 1940.]

An Act to amend the Inland Steam-vessels Act, 1917, in its application to Bengal.

I of 1917. WHEREAS it is expedient to amend the Inland Steam-vessels Act, 1917, in its application to Bengal in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Inland Steam-vessels (Bengal Amendment) Act, 1940. Short title and commence ment.

(2) It shall come into force on such ²date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. The Inland Steam-vessels Act, 1917, shall, in its application to ³[West Bengal], be amended in the manner hereinafter provided. Applica- tion of Act.

3. After section 44 of the Inland Steam-vessels Act, 1917, the following section shall be inserted, namely:— Insertion of new sec- tion 44A in Act I of 1917.

“44A. A Court making an investigation under this chapter may make such order as it thinks fit respecting the costs of the investigation or any part thereof and any money payable as costs by virtue of an order made under this section shall be recoverable under the provisions of the Code of Criminal Procedure, 1898, as if it were a fine.”

Power of court to award costs of investigation under this chapter.

Act V of 1898.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 31st August, 1939; for Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 23rd November and 11th December, 1939; for Proceedings of the Assembly, see the Proceedings of the meeting of the Bengal Legislative Assembly, held on the 12th March, 1940.

²The Act came into force on the 1st July, 1940. Vide notification No. 548Mne, dated the 11th June 1940, published in the *Calcutta Gazette*, dated the 13th June 1940, pt I, page 1707.

³See footnote 2 on p. 1, ante.

Bengal Act IX of 1940¹

THE BENGAL NON-AGRICULTURAL TENANCY (TEMPORARY PROVISIONS) ACT, 1940.

[30th May, 1940.]

An Act to provide for the temporary stay of certain suits and proceedings for ejectment of certain non-agricultural tenants.

WHEREAS it is expedient, pending the enactment of further legislation,* to provide for the temporary stay of certain suits and proceedings for ejectment of certain non-agricultural tenants;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940.

Short title,
extent and
duration.

Ben. Act
III of
1923.
Ben. Act
II of 1866.

(2) It extends to the whole of [West Bengal], excluding Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923, and such suburbs of Calcutta as may have been or may hereafter be notified under section 1 of the Calcutta Suburban Police Act, 1866.

(3) It shall continue in force for [nine years] from the date of its commencement.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

Ben. Act
XV of
1932.

(1) "municipal area" means any area constituted a municipality under the provisions of the Bengal Municipal Act, 1932; and

(2) "non-agricultural tenant" means a tenant who holds under another person, and is liable to pay rent to such person for, non-agricultural land which, under the terms of any agreement, such tenant is entitled to use for any homestead or residential purpose or for the conduct thereon of any commercial or industrial enterprise or any trade or business, and includes a tenant who holds agricultural land within any municipal area, but does not include a tenant who holds non-agricultural land together with any structure thereon erected or owned by the person under whom such tenant holds or by the superior or predecessor in interest of such person.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 30th January, 1940; the report of the Select Committee was presented to the Assembly on the 26th February, 1940; for Proceedings of the Assembly, see the Proceedings of the meetings of the Bengal Legislative Assembly held on the 15th and 26th February and 11th and 12th March, 1940; for Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council held on the 15th and 28th March, 1940.

²See foot-note 2 on p. 1, *ante*.

³Substituted by s. 2 of the Bengal Non-Agricultural Tenancy (Temporary Provisions) West Bengal Amendment Act, 1948 (West Ben. Act XX of 1948), for the words "eight years".

⁴Substituted by s. 3, *ibid* for s. 2.

(Sections 3, 4.)

Stay of suits and proceedings for ejectment of non-agricultural tenants.

3. Notwithstanding anything contained in any other law for the time being in force, every suit and proceeding in any Court for ejectment of a non-agricultural tenant, other than a suit or proceeding for ejectment on account of the non-payment of rent by such tenant, shall be stayed for the period during which this Act continues in force:

Provided that every proceeding for delivery of possession in execution of a decree for ejectment on account of the non-payment of rent by such tenant shall be stayed if, within thirty days from the date of the decree, such tenant deposits into Court the amount of the decree together with the costs of the proceeding.

Setting aside of certain orders for delivery of possession.

4. Notwithstanding anything contained in any other law for the time being in force,—

(a) a non-agricultural tenant other than a tenant holding agricultural land within any municipal area, or a person who but for his ejectment in execution of a decree for ejectment would have been deemed to be a non-agricultural tenant other than a tenant holding agricultural land within any municipal area for the purposes of this Act, if he has been ejected between the thirtieth day of January, 1940, and the date of the commencement of this Act in execution of a decree for ejectment to which the provisions of section 3 are applicable, may, within three months from the date of the commencement of this Act, and

(b) a tenant holding agricultural land within any municipal area, or a person who but for his ejectment in execution of a decree for ejectment would have been deemed to be a tenant holding agricultural land within any municipal area, if he has been ejected between the twenty-fourth day of April, 1948, and the date of the commencement of the Bengal Non-Agricultural Tenancy (Temporary Provisions) West Bengal Amendment Act, 1948, in execution of a decree for ejectment to which the provisions of section 3 are applicable may, within three months from the date of the commencement of the said Act,

West Ben.
Act XX of
1948.

apply, without payment of any fee under the Court-fees Act, 1870, to the Court which made the order for delivery of possession to have such order set aside; and such Court, if satisfied that the order was made between the dates specified in clause (a) or clause (b), as the case may be, and in any proceeding in execution of a decree for ejectment to which the provisions of section 3 are applicable, shall set aside the order and shall direct that the applicant be restored to possession of the land to which the order relates.

VII of
1870.

¹Substituted by s. 4 of the Bengal Non-Agricultural Tenancy (Temporary Provisions) West Bengal Amendment Act, 1948 (West Ben. Act XX of 1948), for s. 4.

The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940.

of 1940.]

(Sections 5—8.)

5. Notwithstanding anything contained in any other law for the time being in force—

Right to realize rent and compensation in certain

(1) the holder of a decree for ejectment to which the provisions of section 3 are applicable shall be entitled—

(a) after the thirtieth day of January, 1940, and for the period during which this Act continues in force, to realize from the judgment-debtor rent at the rate at which the judgment-debtor was paying rent when notice to quit was served upon him ¹[or where no such notice was served, at the rate at which the judgment-debtor was paying rent when the suit for ejectment was instituted], and

(b) between the thirtieth day of January, 1940, and the date of the commencement of this Act in respect of compensation awarded under such decree, to realize from the judgment-debtor ²[on whom a notice to quit was served] compensation calculated on the basis of the rate at which the judgment-debtor was paying rent when ³[such notice] was served upon him; and

(2) the realization of rent under sub-clause (a), or of compensation under sub-clause (b), of clause (1) shall not be deemed to estop the decree-holder from executing the decree for ejectment when such decree becomes executable.

6. Subject to the provisions of sections 4 and 5, every suit and proceeding to which the provisions of section 3 are applicable, which is pending at the date of the commencement of this Act ⁴[or at the date of commencement of the Bengal Non-Agricultural Tenancy (Temporary Provisions) West Bengal Amendment Act, 1948], shall be stayed for the period during which this Act continues in force.

Stay of all suits and proceedings for ejectment pending at the date of the commencement of this Act.

West Ben.
Act XX of
1948.

7. In computing the period provided by any law for the time being in force for the execution of a decree for ejectment to which the provisions of section 3 are applicable, or for the institution of a suit for the ejectment of a non-agricultural tenant, the period during which this Act continues in force shall be excluded.

Saving of limitation.

8. Nothing in this Act shall apply to any tenant who holds non-agricultural land under the Central or Provincial Government or under a local authority ⁵[or who holds under any such Government or local authority agricultural land within any municipal area.].

Exemption of certain tenants.

¹Inserted by s. 5, of the Bengal Non-Agricultural Tenancy (Temporary Provisions) West Bengal Amendment Act, 1948 (West Ben. Act XX of 1948).

²Inserted, *ibid.*

³Substituted, *ibid.* for the words "notice to quit."

⁴Inserted by s. 6, *ibid.*

⁵Added by s. 7, *ibid.*

Bengal Act X of 1940

THE BENGAL MONEY-LENDERS ACT, 1940.

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Bengal Act X of 1940¹

THE BENGAL MONEY-LENDERS ACT, 1940.

[1st August, 1940.]

An Act further to regulate transactions of money-lending in Bengal.

WHEREAS it is expedient to make further and better provision for the control of money-lenders and for the regulation and control of money-lending:

It is hereby enacted as follows:—

CHAPTER I.

Introductory.

1. (1) This Act may be called the Bengal Money-lenders Act, 1940. Short title, extent and commencement.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “bank” means a banking company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside ⁴[India];

(2) “borrower” means a person to whom a loan is advanced and includes a successor-in-interest or surety;

(3) “Calcutta” means the area within the limits of the ordinary original civil jurisdiction of the High Court in Calcutta;

(4) “commercial loan” means a loan advanced to any person to be used by such person solely for the purposes of any business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment,

VII of
1913.

¹ For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 18th July, 1938; the report of the Select Committee was presented to the Assembly on the 16th February, 1939; for Proceedings of the Assembly, see the Proceedings of the meetings of the Bengal Legislative Assembly, held on the 5th August, 1938, 16th February, 3rd and 4th April, 11th, 17th, 18th, 19th, 22nd, 23rd, 24th, 25th, 26th, 29th and 30th May, 1st, 2nd, 14th, 15th, 16th, 20th, 21st, 22nd, 23rd, 26th and 27th June, 1939; for Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 28th June, 23rd, 27th and 28th November, 6th, 11th, 15th and 21st December, 1939, and 3rd, 4th, 8th, 9th, 10th, 11th, 15th, 16th, 17th, 18th and 19th January, 1940.

² See foot-note 2 on p. 1, *ante*.

³ The Act came into force on the 1st day of September, 1940, *vide* notification No. 2674J, dated the 3rd August, 1940, published in the *Calcutta Gazette, Extraordinary*, dated the 3rd August, 1940.

⁴ Substituted by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Chapter I.—Introductory.—Section 2.)

or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor;

Explanation.—Notwithstanding anything contained in any agreement relating thereto, a loan shall not be deemed to be a commercial loan unless it is in substance a loan to be used solely for any of the purposes referred to in this clause.

- (5) “co-operative life insurance society”, “mutual insurance company”, and “insurance company”,

Page 76—

In clause (6) of section 2, for the words “Act of the Provincial Legislature” substitute the words “Provincial Act or Act of the State Legislature”.

substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

of 1912.

[No. 47, dated the 1st February, 1952.]

(a) in relation to any loan advanced before the commencement of the Insurance Act, 1938, an insurance company within the meaning of the Indian Insurance Companies Act, 1928, and

XX of 1928.

(b) in relation to any loan advanced after the commencement of the Insurance Act, 1938, an insurance company within the meaning of that Act;

(8) “interest” includes any sum by whatsoever name called, in excess of the principal paid or payable to a lender in consideration of, or otherwise in respect of, a loan whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a lender in accordance with the provisions of this Act or any other law for the time being in force for or on account of costs, charges or expenses;

(9) “lender” means a person who advances a loan and includes a money-lender;

(10) “licence” means a licence granted under this Act;

(11) “life assurance company” has the same meaning as in the Indian Life Assurance Companies Act, 1912;

VI of 1912.

(12) “loan” means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include—

(a) a deposit of money or other property,

(b) a loan to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other law relating to public, religious or charitable objects;

XXI of 1860.

of 1940.]

(Chapter I.—Introductory.—Section 2.)

- (c) a loan taken or advanced by ¹[the Central Government or any Provincial Government] or by

Page 77—

In item (i) of sub-clause (d) of clause (12) of section 2, for the words and figures “which was a Scheduled bank on the 1st day of January, 1939”, substitute the words “which is a Scheduled bank”.

(Substituted by West Ben. Act XIII of 1950, section 2.)

[No. 45, dated the 2nd December, 1950.]

operative society, insurance company, life assurance company, mutual insurance company, provident insurance society or provident society or from a provident fund;

- (e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;

XXVI of
1881.

- (f) a commercial loan;

- (g) a loan advanced to any person for the purchase or construction of a house or for the construction of a house together with the purchase of the site thereof, within the limits of the area defined by clause (11) of section 3 of the Calcutta Municipal Act, 1923, or of any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, 1932, if such loan is subject to the condition of repayment by instalments extending over a period of ten years or more;

Ben. Act
III of
1923.

Ben. Act
XV of
1932.

- (h) a loan made to or by the Administrator-General and Official Trustee of ²[West Bengal] or the Commissioner of Wakfs or the Official Assignee or the Official Receiver of the High Court in Calcutta;

- (i) a loan or debenture in respect of which dealings are listed on any Stock Exchange;

- (13) “money-lender” means a person who carries on the business of money-lending in ²[West Bengal] or who has a place of such business in ²[West Bengal], and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872;

IX of
1872.

¹Substituted by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, for the words “any Government in British India.”

²See foot-note 2 on p. 1, ante.

[**Sec. Act X**]*(Chapter I—Introductory.—Section 3.)*

- (14) "money-lending business" and "business of money-lending" mean the business of advancing loans either solely or in conjunction with any other business;
- (15) "prescribed" means prescribed by rules made under this Act;
- (16) "principal" means in relation to a loan the amount actually advanced to the borrower;
- (17) "provident fund" has the same meaning as in the Provident Funds Act, 1925; XIX of 1925.
- (18) "provident insurance society" means a society registered under the Provident Insurance Societies Act, 1912; V of 1912.
- (19) "register" means a register of money-lenders maintained under section 7;
- (20) "scheduled bank" has the same meaning as in the Reserve Bank of India Act, 1934; II of 1934.
- (21) "suit" includes an appeal;
- (22) "suit to which this Act applies" means any suit or proceeding instituted or filed on or after the 1st day of January, 1939, or pending on that date and includes a proceeding in execution—
- (a) for the recovery of a loan advanced before or after the commencement of this Act;
 - (b) for the enforcement of any agreement entered into before or after the commencement of this Act, whether by way of settlement of account or otherwise, or of any security so taken, in respect of any loan advanced whether before or after the commencement of this Act; or
 - (c) for the redemption of any security given before or after the commencement of this Act in respect of any loan advanced whether before or after the commencement of this Act.

Notified bank.

3. The Provincial Government may, by notification in the *Official Gazette*, declare any bank to be a notified bank for the purposes of this Act:

Provided that no bank shall be so declared to be a notified bank unless it complies with such conditions as may, with the approval of the Provincial Legislature, be prescribed.

of 1940.]

(Chapter II.—Competent Courts and Procedure.—Chapter III.—Registration and Licensing of Money-lenders.—sections 4—7.)

CHAPTER II.

Competent Courts and Procedure.

4. Notwithstanding anything* contained in any other law, the Courts (hereinafter referred to as Competent Courts) which have jurisdiction to entertain proceedings under sections 16 and 19 and to pass orders therein are the Courts hereinafter specified, within the local limits of whose jurisdiction the money-lender actually and voluntarily resides or carries on the business of money-lending—

Competent Courts under this Act.

- (a) in Calcutta, the Court of Small Causes of Calcutta;
- (b) outside Calcutta, the Court of the District Judge (hereinafter called a "District Court") and any Court to which he may transfer the proceedings.

5. (1) Subject to the provisions of this Act, a Competent Court shall, in proceedings under section 19, have the same powers and shall follow the same procedure as it has and follows in civil suits, and the provisions of section 24 of the Code of Civil Procedure, 1908, shall apply to such proceedings.

Procedure in Competent Courts.

Act V of 1908.

(2) Every order made by a Competent Court under this Act shall be subject to appeal in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

(3) An appeal from a decision made by the Court of Small Causes of Calcutta under this Act shall lie to the High Court as if it were an appeal under sub-section (2) to the High Court from a decision made by a District Court.

CHAPTER III.

Registration and Licensing of Money-lenders.

6. There shall be a Provincial Registrar for the purposes Appoint-

Pages 79, 98.

In sections 6 and 43, omit the words "in India".
(Omitted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)
[No. 47, dated the 1st February, 1952.]

Provided that no person who is not a servant of the Crown in India shall be empowered to act as a Provincial Registrar, Registrar or Sub-Registrar under this Act.

7. Each Sub-Registrar shall maintain in the prescribed form a register of money-lenders holding licences issued by him.

Register of money-lenders.

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 8—13.)

Money-lending business not to be carried on except under licence.

8. After such date not less than six months after the commencement of this Act as the Provincial Government shall, by notification in the *Official Gazette*, appoint in this behalf, no money-lender shall carry on the business of money-lending unless he holds an effective licence.

Explanation.—An effective licence for the purposes of this Act comprises a licence issued to a person who is not disqualified for holding a licence.

Licences.

9. (1) A licence shall be valid throughout the whole of ¹[West Bengal] for a period of three years from the date of its issue or until it is cancelled.

(2) On the expiration of the period for which the licence was granted or on the cancellation of a licence it shall be returned by the money-lender to the Sub-Registrar who issued it.

Licence fee.

10. There shall be paid to the Provincial Government a fee of fifteen rupees for a licence issued under this Act:

Provided that the Provincial Government may, by notification in the *Official Gazette*, remit any part of such fee either generally or for any particular class of money-lenders.

Application for licences.

11. An application for the grant of a licence shall be made in the prescribed form and manner to the Sub-Registrar within the local limits of whose jurisdiction the money-lender has a place of money-lending business and shall contain such particulars as may be prescribed.

Entry in register and grant of licences.

12. On receipt of an application under section 11 and on payment in the prescribed manner of the licence fee specified in section 10, the Sub-Registrar shall, subject to the provisions of section 16, enter the name of the applicant in the register and grant the applicant a licence in such form as may be prescribed.

Stay of suit when money-lender does not hold licence.

13. (1) No Court shall pass a decree or order in favour of a money-lender in any suit instituted by a money-lender for the recovery of a loan advanced after the date notified under section 8, or in any suit instituted by a money-lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is satisfied that, at the time or times when the loan or any part thereof was advanced, the money-lender held an effective licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

¹See foot-note 2 on p. 1, ante.

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 14, 15.)

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit: if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

(5) In this section, the expression "money-lender" includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the payment of licence fee and penalty which may be ordered to be paid under this section.

14. (1) A person shall be disqualified for holding a licence—

Disquali-
fication of
persons for
holding a
licence.

(a) if so ordered by a Court under section 20, for the period ordered;

(b) if he has been convicted of any offence specified in the schedule to this Act and if such conviction has not been set aside by any Court of appeal or revision under any law for the time being in force.

(2) The Provincial Government may, at any time, on application in the prescribed form accompanied by the prescribed fee, remove a disqualification referred to in sub-section (1), having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of the offence.

15. Where it is required to be proved for the purposes of this Act that any person has been convicted of an offence specified in the schedule to this Act or has been disqualified by an order of a Court for holding a licence, such conviction or order may be proved, in addition to any other mode provided by any law for the time being in force—

Proof of
conviction
or order for
disquali-
fication.

(a) by an extract certified under the signature of the officer having the custody of the records of the Court in which such conviction was had, or such order was passed, to be a copy of the sentence or order, or

(b) in the case of a conviction, by a certificate signed by the officer in charge of the jail, in which the punishment or any part thereof was undergone, or by the production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the person so convicted or in respect of whom such order was passed.

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 16—18.)

Refusal to
grant
licence.

16. (1) The grant of a licence shall not be refused except on one or more of the following grounds, namely:—

(a) that the applicant has not complied with the provisions of this Act or of the rules made thereunder in respect of an application for the grant of a licence;

(b) that the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business is under this Act disqualified for holding a licence.

(2) A Sub-Registrar refusing a licence—

(i) under clause (a) of sub-section (1) shall record his reasons for such refusal;

(ii) under clause (b) of sub-section (1) shall record the evidence of the disqualification.

(3) An appeal from the orders of a Sub-Registrar refusing a licence shall, if made within thirty days from the date of such order, lie to a Registrar authorised under section 6 to hear such appeal.

(4) A Registrar referred to in sub-section (3) may decide, if such appeal is allowed, as to the Sub-Registrar to whom application for a licence shall be made and his decision shall, subject to the provisions of sub-section (5), be final for all purposes, and shall be binding on such Sub-Registrar whether he be under the control of such Registrar or not.

(5) A Competent Court may, on application made within ninety days from the date of the decision of the Registrar in appeal under sub-section (3), revise such decision.

(6) The procedure to be followed by a Competent Court or by a Registrar in proceedings under this section shall be in accordance with rules prescribed under this Act.

(7) The provisions of sections 4, 5 and 12 of the Indian Limitation Act, 1908, shall apply to all appeals and applications for revision made under this section, and for the purposes of the said sections Registrar shall be deemed to be a Court.

IX of
1908.

Cancellation
of
licence by a
Sub-Regis-
trar.

17. Any Sub-Registrar may, after giving the money-lender to whom a licence entered in the register maintained by such Sub-Registrar was issued an opportunity of being heard, cancel the licence if it is proved that such money-lender was disqualified for holding a licence at the time when such licence was issued; and thereupon the provisions of clause (ii) of sub-section (2) and of sub-sections (3), (4), (5), (6) and (7) of section 16 shall apply.

Power to
Registrar
and Sub-
Registrar
to examine
any person
on oath.

18. For the purposes of an inquiry under this Act relating to a disqualification for holding a licence a Registrar or a Sub-Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him on oath.

Act V of
1908.

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 19, 20.)

19. Any borrower may, in respect of any money-lender from whom he has taken a loan, make an application to a Competent Court for an order under section 20 on the ground that such money-lender has committed such contravention of the provisions of this Act or the rules made thereunder as render him unfit to carry on the business of money-lending, and on receipt of such application, the said Court shall hold such inquiry as it deems necessary.

Application for cancellation of licence.

20. (1) A Competent Court on an application under section 19 or a Court trying a suit to which this Act applies or a Court passing an order of conviction upon a money-lender for an offence under this Act, if satisfied that the money-lender has committed such contravention of the provisions of this Act or of the rules made thereunder as, in its opinion, makes him unfit to carry on the business of money-lending—

Court's power to cancel a licence.

- (a) shall cause the particulars of the conviction, if any, and of any order passed by the Court under this sub-section to be endorsed on the licence held by the money-lender or by any other person affected by such order; and
- (b) may declare such money-lender or any person responsible for the management of his money-lending business or both disqualified for holding a licence for such period as the Court may think fit and shall cancel and impound the licence held by the money-lender:

Provided that, except in the case of an order passed by a District Court, or by the Court of an Additional District Judge or by the Court of Small Causes of Calcutta, the period of disqualification shall not exceed one year.

(2) If a Court other than a District Court, or the Court of an Additional District Judge or the Court of Small Causes of Calcutta is of opinion that a period of disqualification exceeding one year should be imposed, it shall record its opinion and forward the proceedings to the District Court having jurisdiction in the place where such Court is held.

(3) The District Court to which such proceedings are submitted may, if it thinks fit, examine the parties and recall and examine any person who has already given evidence in the proceedings, and may call for and take any further evidence, and shall pass such order in the case as it thinks fit in accordance with the provisions of sub-section (1).

(4) Any person aggrieved by the decision of a Court under this section may appeal against such order, in the case of the Court of Small Causes of Calcutta to the High Court and in the case of any other Court to the Court to which an appeal ordinarily lies from the decision of the Court passing the order; and the Court which passed the order or the Court

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 21—23.)

of appeal may, if it thinks fit, stay the operation of the order under this section pending the disposal of the appeal:

Provided that where the Court of appeal sets aside or varies an order passed under this section, it shall order that any endorsements made in pursuance thereof upon a licence held by a money-lender shall be erased or modified.

(5) The substance of any order passed under sub-section (1), sub-section (3) or sub-section (4) shall be sent forthwith in the prescribed form by the Court passing the order to the Provincial Registrar and also together with the cancelled licence to the Sub-Registrar who maintains the register in which the licence affected has been entered for entry in the said register and for such circulation of the substance of the said order to other Registrars as may be prescribed.

(6) Any licence required by a Court for endorsement under sub-section (1) shall be produced in such manner and at such time as the Court may direct by the person by whom it is held, and any person who without reasonable cause makes default herein shall be liable on conviction to a fine not exceeding fifty rupees for each day of the period during which the default continues.

(7) The powers conferred on a Court under sub-section (1) may be exercised by a Court in appeal or in revision.

No compensation for cancellation of licence.

21. A person whose licence has been cancelled shall not be entitled to any compensation on such account nor to the refund of any licence fee paid in respect of such licence.

Licence fees and penalties recoverable as public demands.

22. All licence fees and all penalties imposed under this Act shall be recoverable as public demands.

Offences in respect of licences.

23. (1) Whoever being disqualified for holding a licence, applies for or obtains a licence during the pendency of such disqualification, without disclosing the fact thereof, shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both, and any licence so obtained shall not be deemed to be an effective licence.

(2) Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Act or abets such obliteration or attempt shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

of 1940.]

(Chapter IV.—*Regulation of Accounts of Money-lenders.*—
Sections 24, 25.)

CHAPTER IV.

Regulation of Accounts of Money-lenders.

24. (1) Every money-lender shall keep and maintain at least a cash book, a ledger and a receipt book in such form or forms as may be prescribed, and the same shall be written in Bengali or English in the regular course of business.

Duty of money-lender to keep accounts.

(2) Every money-lender shall—

- (a) deliver to the borrower at the time a loan is advanced a statement in Bengali or English as the borrower may desire, in such form as may be prescribed and showing such details of the conditions of the loan and such other information connected therewith as may be prescribed;
- (b) give to the borrower a plain and complete receipt for every payment made on account of any loan at the time of such payment;
- (c) upon repayment in full of a loan mark indelibly with words indicating full payment or cancellation every paper signed by the borrower, and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

I of 1872.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in sub-section (1) shall, if certified in such manner as may be prescribed, be admissible as evidence of the contents of such account.

25. (1) Every money-lender shall, within two months of the commencement of each year, furnish each of his borrowers with a legible statement of accounts in Bengali or English as the borrower may desire signed by the money-lender or his agent and showing the amount outstanding against the borrower: such statement shall be in the prescribed form and shall show—

Money-lenders to furnish statements of accounts.

- (a) the amounts of principal and interest due to the money-lender at the commencement of the year;
- (b) the amounts of any sums advanced to the borrower from time to time since the commencement of the year and the dates on which they were advanced;
- (c) the amounts of any payments received from the borrower since the commencement of the year in respect of loans outstanding and the dates on which they were received;
- (d) the amount of every sum due from the borrower remaining unpaid and the date on which each such sum became due and the amount of interest accrued due and unpaid in respect of every such sum;

(Chapter IV.—Regulation of Accounts of Money-lenders.—
Sections 26, 27.)

(e) the amount of every sum not yet due which remains outstanding and the date upon which each such sum will become due; and

(f) such other particulars as may be prescribed.

(2) In respect of any particular loan, whether advanced before or after the commencement of this Act, a money-lender shall, on demand being made in writing by the borrower at any time while the loan or any portion thereof remains outstanding, supply to the borrower or to any person specified in that behalf in the demand, within thirty days from the date of receipt of the written demand by the money-lender or his duly authorised agent, a statement in Bengali or English as the borrower may desire, signed by the money-lender or his agent and showing in the prescribed form any or all of the particulars specified in sub-section (1):

Provided that the money-lender shall not be bound to comply with such demand if he has complied with a demand made not more than six months prior to the date thereof, or if within such period of six months he has furnished the statement required by sub-section (1).

(3) A money-lender shall, on a demand in writing by the borrower, supply to the borrower or to any person specified in that behalf in the demand a copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower:

Provided that a money-lender shall not be bound to comply with such a demand if he has previously furnished the borrower with such copy, except on payment of such fee as may be prescribed.

(4) In this section the expression "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

Borrower
not bound
by money-
lender's
statement
of accounts.

26. A borrower to whom a statement of accounts has been furnished under section 25 shall not be bound to acknowledge or deny its correctness, and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

Procedure
in suits
relating to
loans by
money-
lenders.

27. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(a) a Court shall, before deciding the claim on its merits, frame and decide the issue whether the money-lender has in respect of the claim in suit complied with the provisions of sections 24 and 25; and

(b) if the Court finds that the provisions of either of the said sections have not been so complied with, it may, if the plaintiff's claim is established either wholly or in part, disallow the whole or such portion of the interest found due as may,

of 1940.]

(Chapter IV.—Regulation of Accounts of Money-lenders.—

Chapter V.—Assignment of Loans.—Section 28.)

in the circumstances of the case, appear reasonable to the Court, and may also disallow costs, or in computing the amount of interest due upon the loan, the Court may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections:

Provided that if the money-lender has, after the time specified in the said sections, given the receipt or furnished the statement, as the case may be, and if he satisfies the Court that he had sufficient cause for not doing so earlier, the Court may include any such period in computing the interest.

Explanation.—A money-lender who has given a receipt or furnished a statement in the prescribed form shall be held to have complied with the provisions of section 24 or section 25, as the case may be, in spite of any errors and omissions in such receipt or statement, if the Court finds that such errors and omissions are neither material nor made fraudulently.

CHAPTER V.

Assignment of loans.

28. (1) Where any debt in respect of—

- (i) a loan advanced by a lender, whether before or after the commencement of this Act, or
- (ii) interest on any such debt, or
- (iii) the benefit of any agreement made, or security taken, in respect of any such debt or interest,

is assigned to any person, the assignor (whether he is the lender by whom the loan was advanced or any person to whom the debt has been previously assigned) shall, before the assignment is made,—

- (a) give to the assignee notice in writing that the debt, interest thereon, agreement or security is affected by the operation of this Act, and
- (b) where the debt is in respect of a loan advanced by a money-lender, supply to the assignee in such form as may be prescribed all information as to the state of the loan together with copies of documents relating thereto.

(2) Any person who acts in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

(3) In this section the expression “assigned” means assigned by an assignment *inter vivos* other than an assignment by operation of law; and the expressions “assignor” and “assignee” have corresponding meanings.

Notice and information to be given on assignment of loans by lenders.

(Chapter V.—Assignment of Loans.—Section 29.)

Application
of Act as
respects
assignees.

29. (1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him after the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid:

Provided that, notwithstanding anything contained in this Act—

(a) any agreement with, or security taken by, a lender or money-lender in respect of a loan advanced by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(b) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid;

but in every such case the lender or money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings instituted by, an assignee or holder for value who is himself a money-lender.

(2) The provisions of this Act shall apply and be deemed always to have applied and shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him before the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid.

(3) Nothing in this section shall render valid for any purpose any agreement, security or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

of 1940.]

(Chapter VI.—Interest and other charges.—Sections 30—32.)

CHAPTER VI.

Interest and other charges.

30. Notwithstanding anything contained in any law for the time being in force, or in any agreement,

Limitations as to amount and rate of interest recoverable.

(1) no borrower shall be liable to pay after the commencement of this Act—

(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan,

(b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date,

(c) interest at a rate *per annum* exceeding in the case of—

(i) unsecured loans, ten *per centum* simple,

(ii) secured loans, eight *per centum* simple,

whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act;

(2) no borrower shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a decree passed before such date, interest at rates *per annum* exceeding those specified in sub-clause (c) of clause (1);

(3) a lender shall be entitled to institute a suit at any time after the commencement of this Act in respect of a transaction to which either or both of the preceding clauses applies or apply.

31. Notwithstanding anything contained in any law for the time being in force, no Court shall, in any decree passed in any suit to which this Act applies—

Prohibition of interest on decretal amount.

(a) if the loan to which the decree relates was advanced before the commencement of this Act, allow any interest on the decretal amount, or

(b) if the loan to which the decree relates was advanced after the commencement of this Act, allow any interest other than interest not exceeding six *per centum per annum* on the principal sum adjudged.

32. In the case of loans in kind, the money value of the commodity at the time when, and in the locality where, the loan was advanced shall, for the purposes of this Act, be deemed to be the principal of the loan, and in determining the amount which may, subject to the provisions of this chapter, be decreed in respect of any loan repayable in

Computation of interest on loans in kind.

[Ben. Act X

(Chapter VI.—Interest and other charges.—Chapter VII.—Miscellaneous.—Sections 33, 34.)

kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

Prohibition
of charges
for
expenses
on loans.

33. Any agreement between a lender and a borrower or intending borrower for the payment to the lender of any sum on account of costs, charges or expenses incidental or relating to the negotiations for, or the granting of, the loan or proposed loan, shall be illegal, and if any sum is paid to a lender by the borrower or intending borrower as, for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly:

Provided that nothing in this section shall debar a lender from recovering the costs of investigating title, of stamp duty and registration of documents and other necessary and incidental expenses in cases where the agreement includes a stipulation that property is to be given as security or by way of mortgage, or the costs of stamp duty and registration of documents in the case of unsecured loans, if both parties have agreed to such expenditure and the reimbursement thereof, nor from recovering such costs, charges or expenses as are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

IV of
1882.

CHAPTER VII.

Miscellaneous.

Power of
Court
to direct
payment
by instal-
ments.

34. (1) Notwithstanding anything contained in any law for the time being in force, or in any agreement, the Court shall—

(a) in suits in respect of loans to which the provisions of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, apply, on the application of the defendant and after hearing the plaintiff, notwithstanding the limit of six months provided therein, direct at the time of the passing of the preliminary decree under rule 2 or rule 4 of the said Order to the effect mentioned in sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2,—

(i) that the payment of the amount found or declared due under sub-rule (1) of rule 2 or sub-rule (1) of rule 4 of the said Order, as the case may be, is to be made, subject to such conditions as the Court may impose in such number of annual instalments and on such dates as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant and the amount of the decree; and

Act V of
1908.

of 1940.]

(Chapter VII.—Miscellaneous.—Section 34.)

- (ii) that in default of payment of any such instalment the plaintiff shall, after giving to the defendant such notice as may be prescribed, be entitled to apply for a final decree under sub-clause (ii) of clause (c) of sub-rule (1) of the said rule 2 or under sub-rule (1) of the said rule 4, as the case may be, and the date of such default shall be deemed to be the date fixed under sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2 for payment of the whole amount found or declared due under or by the preliminary decree:

Provided that nothing in this clause shall affect the power of the Court to allow extension of time under sub-rule (2) of rule 2 or sub-rule (2) of rule 4 of the said Order:

Provided further that if the defendant, after receiving the notice referred to in sub-clause (ii) and before a final decree is passed, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not pass a final decree;

- (b) in suits in respect of loans advanced before the commencement of this Act other than those referred to in clause (a)—

- (i) on the application of a defendant and after hearing the plaintiff, order at the time of the passing of the decree, or
 - (ii) on the application of a judgment-debtor against whom a decree in such suit has been passed whether before or after the commencement of this Act and after notice to the decree-holder, order at any time after the decree has been passed,

that the amount of the decree shall, subject to such conditions as the Court may impose, be payable without interest in such number of annual instalments, on such dates and within such period not exceeding twenty years as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant or the decree-holder and the judgment-debtor and the amount of the decree, and that, if default is made in making payment of any instalment, that instalment and not the whole of the decretal amount shall be recoverable;

- (c) during the pendency of any enquiry under sub-clause (ii) of clause (b) order, subject to such conditions as the Court may impose, the stay of execution of the decree.

(2) In default of payment of any instalment referred to in clause (b) of sub-section (1), the decree-holder shall, after

(Chapter VII.—Miscellaneous.—Sections 35, 36.)

giving to the judgment-debtor such notice as may be prescribed, be entitled to apply for execution of the decree in respect of such instalment together with interest thereon at the rate of not more than six *per centum per annum* from the date of such default:

Provided that nothing in this sub-section shall affect the power of the Court to allow, prior to an order for execution of the decree, an extension of time of not less than one year for the payment of any instalment, and that if such extension of time is allowed, the payment of such instalment shall not be deemed to be in default:

Provided further that if the judgment-debtor, after receiving the notice referred to in this sub-section and prior to an order for execution of the decree, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not order execution of the decree.

(3) Any order made under sub-clause (ii) of clause (b) of sub-section (1) shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908.

Act V
of 1908.

Sale of
property
in execu-
tion of
decrees in
respect of
loans.

35. Notwithstanding anything contained in any other law for the time being in force, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan shall specify only so much of the property of the judgment-debtor as the Court considers to be saleable at a price sufficient to satisfy the decree, and the property so specified shall not be sold at a price which is less than the price specified in such proclamation:

Provided that, if the highest amount bid for the property so specified is less than the price so specified, the Court may sell such property for such amount, if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price so specified.

Reopening
of trans-
actions.

36. (1) Notwithstanding anything contained in any law for the time being in force, if in any suit to which this Act applies, or in any suit brought by a borrower for relief under this section whether heard *ex parte* or otherwise, the Court has reason to believe that the exercise of one or more of the powers under this section will give relief to the borrower, it shall exercise all or any of the following powers as it may consider appropriate, namely, shall—

- (a) reopen any transaction and take an account between the parties;
- (b) notwithstanding any agreement, purporting to close previous dealings and to create new obligations, reopen any account already taken between the parties;
- (c) release the borrower of all liability in excess of the limits specified in clauses (1) and (2) of section 30;

of 1940.]

(Chapter VII.—Miscellaneous.—Section 36.)

- (d) if anything has been paid or allowed in account on or after the first day of January, 1939, in respect of the liability referred to in clause (c), order the lender to repay any sum which the Court considers to be repayable in respect of such payment or allowance in account as aforesaid:

Provided that in the case of a loan to which the provisions of sub-section (2) of section 29 apply the lender or money-lender and each of his assignees shall be liable to repay the sum which the Court considers to be repayable in respect of and in proportion to the sum received by such lender or money-lender and such assignee;

- (e) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the lender has parted with the security, order him to indemnify the borrower in such manner and to such extent as it may deem just:

Provided that in the exercise of these powers the Court shall not—

- (i) reopen any adjustment or agreement, purporting to close previous dealings and to create new obligations, which has been entered into at a date more than twelve years prior to the date of the suit by the parties or any person through whom they claim, or
- (ii) do anything which affects any decree of a Court, other than a decree in a suit to which this Act applies which was not fully satisfied by the first day of January, 1939, or anything which affects an award made under the Bengal Agricultural Debtors Act, ¹[1936].

Ben. Act
VII of
1936.

Explanation.—A decree shall not, for the purposes of this section, be deemed to have been fully satisfied so long as there remains undisposed of an application by the decree-holder for possession of property purchased by him in execution of the decree.

(2) If in exercise of the powers conferred by sub-section (1) the Court reopens a decree, the Court—

- (a) shall, after affording the parties an opportunity of being heard, pass a new decree in accordance with the provisions of this Act, and may award to the decree-holder such costs in respect of the reopened decree as it thinks fit,
- (b) shall not do anything which affects any right acquired *bona fide* by any person, other than the decree-holder, in consequence of the execution of the reopened decree,

¹Substituted by the West Bengal Repealing and Amending Act, 1948 (West Bengal Act VII of 1948), for the figure "1935".

(Chapter VII.—Miscellaneous.—Section 36.)

- (c) shall order the restoration to the judgment-debtor of such property, if any, of the judgment-debtor acquired by the decree-holder in consequence of the execution of the reopened decree as may be in the possession of the decree-holder on the date on which the decree was reopened.
- (d) shall order the judgment-debtor to pay to the decree-holder, in such number of instalments as it may think fit, the whole amount of the new decree passed under clause (a), and
- (e) shall direct that, in default of the payment of any instalment ordered under clause (d), the decree-holder shall be put into possession of the property referred to in clause (c) and that the amount for which the decree-holder purchased such property in execution of the reopened decree shall be set off against so much of the amount of the new decree as remains unsatisfied.

(3) In this section the expression "suit to which this Act applies" includes a proceeding in respect of any application relating to the admission or amount of a proof of a loan advanced before or after the commencement of this Act in any insolvency proceedings.

(4) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

(5) Nothing in this section shall affect the rights of any assignee or holder for value if the Court is satisfied that the assignment to him was *bona fide*, and that he had not received the notice referred to in clause (a) of sub-section (1) of section 28.

(6) Notwithstanding anything contained in any law for the time being in force,—

(a) the Court which, in a suit to which this Act applies, passed a decree which was not fully satisfied by the first day of January, 1939, may exercise the powers conferred by sub-sections (1) and (2)—

- (i) in any proceedings in execution of such decree, or
- (ii) on an application for review of such decree made within one year of the date of commencement of this Act, and the provisions of rules 2 and 5 of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908, shall not apply to any such application;

Act V
of 1908.

(b) any Court before which an appeal is pending in respect of a decree referred to in clause (a) may either itself exercise the like powers as may be exercised under sub-sections (1) and (2), or refer the case to the Court which passed the decree directing such Court to exercise such powers, and such Court shall after exercise thereof return the

of 1908.]

(Chapter VII.—Miscellaneous.—Sections 37—39.)

Act V
1908.

record with the additional evidence, if any, taken by it and its findings and the reasons therefor to the Appellate Court and thereupon the provisions of rule 26 of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall apply.

37. Notwithstanding anything contained in any law for the time being in force, no Court shall order execution of a decree passed in any suit to which this Act applies by arrest and detention in prison of the judgment-debtor.

Prohibition of execution of decrees by arrest and detention in prison.

38. (1) Any borrower may make an application at any time to a Court which would have jurisdiction to entertain a suit by the lender for the recovery of the principal and interest of a loan made before or after the commencement of this Act for taking accounts and for declaring the amount due to the lender. Such application shall be in the prescribed form and shall be accompanied by a fee of one rupee, and on receipt of such application the Court shall cause a notice thereof to be served on the lender.

Inquiry for taking accounts and declaring the amount due.

(2) The Court shall thereafter take an account of the transactions between the parties and shall declare the amounts, if any,—

- (a) payable and already due,
- (b) payable but not yet due

by the borrower to the lender, whether as principal or interest or both. In taking accounts under this section the Court shall follow the same procedure as it does in regard to civil suits and, so far as may be, the provisions of Chapters IV, VI and VII.

(3) A proceeding under this section shall be deemed to be a suit for the purposes of section 11 of the Code of Civil Procedure, 1908, and a declaration under this section shall be subject to appeal, if any, as if it were a decree of the Court, and every decision in appeal shall be subject to appeal to the High Court in the same manner as a decree passed in appeal.

39. (1) Where any sum of money has been declared under sub-section (2) of section 38 to be payable by the borrower to the lender as principal or interest or both, or where a borrower has sent to a lender by postal money order any sum of money due from him to the lender in respect of a loan and the lender has refused to accept the same, the borrower may apply in the prescribed manner to the Civil Court of the lowest grade having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the lender, and the Court shall keep the said sum in deposit.

Deposit in Court of money due to lender.

(2) The Court shall thereupon cause notice of the deposit to be served on the lender, and the lender may on presenting

(Chapter VII.—Miscellaneous.—Sections 40, 41.)

a petition, verified as for a plaint and stating the sum then due in respect of the loan and his willingness to accept the money so deposited, receive the sum :

Provided that in accepting any sum deposited under this section, a lender shall not be bound by any statement made by the borrower in depositing the same :

Provided also that, if the Court is satisfied that the lender has, without reasonable excuse, refused to accept any sum sent to him by postal money order by the borrower in respect of the loan, it may direct the payment to the borrower, from the money so deposited or otherwise, of such sum as damages and costs as it thinks fit.

(3) Notwithstanding any agreement between the parties, when the borrower has deposited in Court under this section any sum due in respect of the loan, if such sum is in payment of the principal or any part thereof, the interest on such principal or part shall cease from the date of the service of notice on the lender under sub-section (2).

(4) Nothing in this section shall affect the operation of sections 83 and 84 of the Transfer of Property Act, 1882, in regard to loans to which those sections apply.

IV of
1882

Entry of
an amount
in a bond,
etc.,
different
to the
amount
actually
lent to be
an offence.

40. (1) No lender shall take from a borrower or intending borrower any note, promise to pay, power of attorney, bond or security which does not state the actual amount of the loan, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly, nor shall he take from any borrower or intending borrower any instrument in which any entry is left blank for completion at a later date.

(2) Whoever intentionally contravenes the provisions of sub-section (1) shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) No money-lender shall take from any borrower or intending borrower any note, promise to pay, power of attorney, bond or security which describes or refers to as a commercial loan any loan which is not a commercial loan.

(4) Notwithstanding anything contained in any law for the time being in force, any note, promise to pay, power of attorney, bond, security or document referred to in sub-section (1) or sub-section (3) shall be void and unenforceable.

(5) Notwithstanding anything contained in any law for the time being in force, in any suit, or proceeding the burden of proving that a loan is a commercial loan shall be on the money-lender who advanced the loan.

Penalty
for mole-
station.

41. (1) Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover, a debt shall be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

of 1940.]

(Chapter VII.—Miscellaneous.—Section 42.)

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing,—

- (a) obstructs or uses violence to or intimidates such other person, or
- (b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in the use thereof, or
- (c) loiters or does any similar act at or near a house, building or place where such other person resides or works or receives his pay or wages or carries on business or happens to be—

shall be deemed to molest such other person :

Provided that a person who attends at or near such house, building or place for the purpose only of making a formal demand for repayment of a loan due or of obtaining or communicating information shall not be deemed to molest.

Act V of
1898.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be cognisable and bailable.

Ben. Act
IV of
1935.

(3) Nothing in this section shall be deemed to restrict the provisions of the Bengal Workmen's Protection Act, [1935].

42. (1) When any money-lender or any servant or agent of, or any person responsible for the management of the money-lending business of, a money-lender knowingly and wilfully commits, authorises or permits any default in complying with, or any contravention of, any provision of this Act, if the money-lender or such servant, agent or person is—

General
provisions
regarding
penalties.

- (a) an individual, such individual, or
- (b) an undivided Hindu joint family, any member of such family who is knowingly and wilfully a party to such default or contravention, or
- (c) a body corporate, any director or officer of such body who is knowingly and wilfully a party to such default or contravention, or
- (d) an unincorporated body, any member of such body who is knowingly and wilfully a party to such default or contravention,

shall, where a specific penalty has been provided in this Act, be punishable under the provisions of this Act providing such penalty, and where no such specific penalty has been provided, be punishable on conviction—

- (i) for the first offence, with fine which may extend to two hundred rupees,

¹Substituted by the West Bengal Repealing and Amending Act, 1948 (West Bengal Act VII of 1948), for the figure "1934".

(Chapter VII.—Miscellaneous.—Sections 43, 44.)

- (ii) for the second offence, with fine which may extend to five hundred rupees, and
- (iii) for any subsequent offence, with rigorous imprisonment which may extend to three months and shall also be liable to fine.

(2) No Court shall take cognizance of an offence punishable under sub-section (1) except on the complaint in writing of a Provincial Registrar or a Registrar or of a person authorised in this behalf by the Provincial Registrar or a Registrar.

(3) The Provincial Registrar may order the withdrawal of a complaint made under sub-section (2), and, if he does so, shall forward a copy of such order to the Court, and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

(4) No Court inferior to that of a Presidency Magistrate or a Subdivisional Magistrate or a Magistrate of the first class shall try an offence punishable under sub-section (1).

Protection
to persons
acting
under
this Act.
Power to
make
rules.

43. No suit, prosecution or proceeding shall lie against any servant of the Crown in India for anything which is in good faith done or intended to be done under this Act.

44. (1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely:—

- (a) the conditions referred to in the proviso to section 3;
- (b) the control to be exercised by the Provincial Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars;
- (c) the form in which registers under section 7 shall be maintained;
- (d) the form and manner in which an application for the grant of a licence shall be made, and the particulars to be therein contained;
- (e) the manner in which licence fees and penalties shall be paid;
- (f) the form of licences;
- (g) the form of, and the fee payable on, an application under sub-section (2) of section 14;
- (h) the procedure to be followed by a Competent Court or by a Registrar in proceedings under section 16;
- (i) the form in which a Court shall send the substance of the order referred to in sub-section (5) of section 20, and the method of circulation of the same to other Registrars;
- (j) the form in which a money-lender shall maintain his cash book, ledger and receipt book;

The Bengal Money-lenders Act, 1940.

of 1940.]

(Chapter VII.—Miscellaneous.—Section 45.—The Schedule.)

- (k) the form of, and the particulars to be contained in, the statement to be delivered under sub-section (2) of section 24;
- (l) the form of the statements to be furnished under section 25 and the fee to be paid under the proviso to sub-section (3) of that section;
- (m) the form in which information shall be supplied to an assignee under clause (b) of sub-section (1) of section 28;
- (n) the form in which notice shall be given by the plaintiff to the defendant under sub-clause (ii) of clause (a) of sub-section (1) of section 34, and by the decree-holder to the judgment-debtor under sub-section (2) of that section;
- (o) the form of an application under section 38; and
- (p) the manner in which an application under section 39 shall be made.

Ben. Act
VII of
1933.

45. The Bengal Money-lenders Act, 1933, shall not apply to any loan to which this Act applies nor to any transaction connected with such loan.

Bengal
Act VII
of 1933
not to
apply to
loans
to which
this Act
applies.

THE SCHEDULE.

[See sections 14(1)(b) and 15.]

Act XLV
of 1860.

Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 379 to 382, 384 to 389, 392 to 404, 406 to 409, 411 to 414, 417 to 424, 449, 450, 451 (with intent to commit theft), 454 (with intent to commit theft), 455, 457 (with intent to commit theft), 458 to 462, 465, 477 and 477A or under section 52 of

VI of 1898. the Indian Post Office Act, 1898.

Bengal Act XI of 1940¹

THE ADMINISTRATOR GENERAL'S (BENGAL AMENDMENT) ACT, 1940.

[8th August, 1940.]

An Act to amend the Administrator General's Act, 1913, in its application to Bengal.

III of
1913.

WHEREAS it is expedient to amend the Administrator General's Act, 1913, in its application to Bengal, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Administrator General's (Bengal Amendment) Act, 1940.

Short
title and
commen-
cement.

(2) It shall come into force on such date² as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. The Administrator General's Act, 1913 (hereinafter referred to as the said Act), shall, in its application to ³[West Bengal], be amended in the manner hereinafter provided.

Appli-
cation of
Act.

3. In section 10 of the said Act for the words commencing "Whenever any person" and ending "at a Presidency-town" the following shall be substituted, namely:—

Amend-
ment of
section 10
of Act III
of 1913.

"Whenever any person, not being an exempted person, has died leaving assets within ³[West Bengal], or being an exempted person, has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court or within any area notified by the Provincial Government in this behalf in the *Official Gazette*".

4. In sub-section (1) of section 11 of the said Act—

Amend-
ment of
section 11.

(a) for the words commencing "Whenever any person" and ending "the said High Courts" the following shall be substituted, namely:—

"Whenever any person, not being an exempted person, has died leaving assets within ³[West Bengal], or being an exempted person, has died leaving assets within the local limits of the

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 12th January, 1939; the Report of the Select Committee was presented to the Assembly on the 21st February, 1940; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 5th April, and 5th December, 1939, 21st February, 12th, 15th and 28th March, 1940; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 15th and 28th March, 1940.

²The Act came into force on the 1st day of September, 1940, vide Notification No. 2953J., dated the 23rd August, 1940, published in the *Calcutta Gazette*, dated the 29th August, 1940, Part I, page 2315.

³See foot-note 2 on page 1, ante.

[Ben. Act XI of 1940.]

(Sections 5—9.)

ordinary original civil jurisdiction of the High Court or within any area notified by the Provincial Government in this behalf in the *Official Gazette*" and

(b) for the words "such Court" the words "the Court" shall be substituted.

**Amend-
ment of
section 16.** **5.** In section 16 of the said Act for the words "rupees one thousand" the words "two thousand rupees" shall be substituted.

**Amend-
ment of
section 32.** **6.** In section 32 of the said Act after the words "in the *Official Gazette*, the Administrator General may" the following words shall be inserted, namely:—

"after the lapse of the said three months, or if he is required so to do in writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased, before the lapse of the said three months,".

**Insertion
of new
section
36A.** **7.** After section 36 of the said Act the following section shall be inserted, namely:—

"36A. When a certificate is revoked in accordance with the provisions of section 35, Payment to holder of certificate before it is revoked. all payments made *bona fide* under such certificate to the holder thereof before such revocation, shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the holder of such certificate may retain, and reimburse himself in respect of, any payments made by him which the person to whom a certificate or probate or letters of administration may afterwards be granted, might lawfully have made."

**Amend-
ment of
section 40.** **8.** In sub-section (2) of section 40 of the said Act after the word "payment" the words "of the amount decreed or ordered by the court to be paid" shall be inserted.

**Amend-
ment of
section 45.** **9.** For clause (a) of section 45 of the said Act the following clauses shall be substituted, namely:—

"(a) whether the accounts have been audited in the prescribed manner, . . .

(aa) whether, so far as can be ascertained by such audit, the accounts contain a full and true account of everything which ought to be inserted therein,".

Bengal Act XII of 1940¹

THE OFFICIAL TRUSTEES (BENGAL AMENDMENT) ACT, 1940.

[8th August, 1940.]

An Act to amend the Official Trustees Act, 1913, in its application to Bengal.

WHEREAS it is expedient to amend the Official Trustees
II of 1913. Act, 1913, in its application to Bengal, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Official Trustees (Bengal Amendment) Act, 1940. Short title and commencement.

(2) It shall come into force on such date² as the Provincial Government may, by notification³ in the *Official Gazette*, appoint.

2. The Official Trustees Act, 1913, shall, in its application to ³[West Bengal], be amended in the manner hereinafter provided. Application of Act.

3. For clause (a) of sub-section (2) of section 19 of the Official Trustees Act, 1913, the following clauses shall be substituted, namely:— Amendment of section 19 of Act II of 1913.

“(a) whether the accounts have been audited in the prescribed manner, and

(aa) whether, so far as can be ascertained by such audit, the accounts contain a full and true account of everything which ought to be contained therein, and”.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 12th January, 1939; the Report of the Select Committee was presented to the Assembly, on the 21st February, 1940; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 5th April, and 5th December, 1939, 21st February and 12th March, 1940; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 15th and 28th March, 1940.

²The Act came into force on the 1st day of September, 1940, vide Notification No. 2954J., dated the 23rd August, 1940, published in the *Calcutta Gazette*, dated the 29th August, 1940, Part I, page 2315.

³See foot-note 2 on page¹, *ante*.

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Bengal Act XIII of 1940.¹

THE BENGAL REVENUES (CHARGED EXPENDITURE) ACT, 1940.

[12th September, 1940.]

An Act to declare certain expenditure to be expenditure charged upon the revenues of the Province.

WHEREAS it is expedient to declare the contributions payable under certain enactments, and the grants to be made to certain local authorities by the Provincial Government to be expenditure charged upon the revenues of the Province;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Revenues (Charged Expenditure) Act, 1940.

Short
title and
commen-
cement.

(2) It shall come into force on the first day of April, 1941.

2. The contribution payable by the Provincial Government under each enactment specified in the first column of the First Schedule to this Act, or so much of such contribution as is specified in the corresponding entry in the third column of the said Schedule, is hereby declared to be expenditure charged upon the revenues of the Province.

Certain
contribu-
tions to be
charged.

3. (1) In respect of each enactment specified in the Second Schedule to this Act, the Provincial Government shall, in such manner, and by such date as it may determine, make in each year from provincial revenues, a grant approximately equal, in the opinion of the Provincial Government, to the net sum which, by virtue of the provisions of section 136 of the Government of India Act, 1935, and of the Government of India (Adaptation of Indian Laws) Order, 1937, would have been payable in that year to provincial revenues under that enactment and which, but for the said provisions, would have been payable in that year to a local authority.

Certain
grants
to be made
and
charged.

26, Geo.
5, Ch. 2.

(2) All grants payable under the provisions of sub-section (1) are hereby declared to be expenditure charged upon the revenues of the Province.

(3) The Provincial Government may, by notification in the *Official Gazette*, include in, or exclude from, the Second Schedule any appropriate enactment.

(4) The reference in sub-section (1) to the Second Schedule shall be construed as a reference to such Schedule as for the time being amended under sub-section (3).

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 4th July, 1940; for the proceedings of the Assembly see the proceedings of the meetings of the Bengal Legislative Assembly held on the 6th August, 1940; for proceedings of the Council see the proceedings of the meetings of the Bengal Legislative Council held on the 9th, 13th and 19th August, 1940.

*(The First Schedule and the Second Schedule.)***THE FIRST SCHEDULE.***(See Section 2.)*

Short title.	Section.	Contribution payable.	
1	2	3	
1* *			
1* * * * *	..	*	
<i>Bengal Acts.</i>			
The Howrah Bridge Act, 1926 ..	11	The whole.	Ben. Act IV of 1926.
The Bengal Motor Vehicles Tax Act, 1932.	10	The whole.	Ben. Act I of 1932.
The Albert Victor Leper Hospital Act, 1935.	7	The whole.	Ben. Act IX of 1935.

THE SECOND SCHEDULE.*(See Section 3.)**Central Acts.*

The Howrah Offences Act, 1857.	XXI of 1857.
The Cattle-trespass Act, 1871.	I of 1871.
The Bengal Tenancy Act, 1885.	VIII of 1885.

¹The heading "Central Act" and the entry relating to the "Dacca University Act, 1920" were omitted by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

of 1940.]

(The Second Schedule.)

Bengal Acts.

Ben. Act
IX of
1880. The Cess Act, 1880.

Ben. Act
I of 1885. The Bengal Ferries Act, 1885.

Ben. Act
III of
1885. The Bengal Local Self-Government Act of 1885.

Ben. Act I
of 1893. The Licensed Warehouses and Fire Brigade Act, 1893.

Ben. Act I
of 1919. The Calcutta Hackney Carriage Act, 1919.

Ben. Act
V of 1919. The Bengal Village Self-Government Act, 1919.

Ben. Act
VI of
1919. The Bengal Food Adulteration Act, 1919.

Ben. Act
III of
1923. The Calcutta Municipal Act, 1923.

Ben. Act
VII of
1930. The Bengal (Rural) Primary Education Act, 1930.

Ben. Act
XV of
1932. The Bengal Municipal Act, 1932.

Bengal Act XVI of 1940.¹

THE BENGAL SHOPS AND ESTABLISHMENTS ACT, 1940.

[31st October, 1940.]

An Act to regulate the holidays, payment of wages and leave of persons employed in shops, commercial establishments and establishments for public entertainment or amusement and the hours of work of persons employed in shops and establishments for public entertainment or amusement.

WHEREAS it is expedient to regulate the holidays, payment of wages and leave of persons employed in shops, commercial establishments and establishments for public entertainment or amusement and the hours of work of persons employed in shops and establishments for public entertainment or amusement;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Shops and Establishments Act, 1940.

Short
title,
extent and
commence-
ment.

(2) It extends to the whole of ²[West Bengal.]

(3) It shall come into force on such date³ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

Ben. Act
III of

(4) It shall apply in the first instance to Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal ~~Act, 1904, as amended by notification~~

Correction slips for the Supplement to the Bengal Code.

Pages 108-111—

In section 2—

(a) to clause (1), *add* the following words, namely:—

“or for any other purpose whatsoever relating to business”;

ii-

(b) *in* clause (12), *after* the words “cash or on credit, and” *insert* the following words, namely:—

“includes any offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such sale or with the storage of commodities or articles for the purpose of such sale and also includes”;

(c) *in* clause (13), *omit* the word “and” at the end;

(d) to clause (14) *add* the word “and”; and

(e) *after* clause (14) *add* the following clause, namely:—

“(15) ‘young person’ means a person who has not completed his seventeenth year”.

(Added, inserted and omitted by West Ben. Act LXIV of 1950, section 2.)

[No. 46. dated the 9th November, 1951.]

(Section 2.)

- (2) "commercial establishment" means an establishment in which there is conducted the business of advertising, commission, forwarding or commercial agency, a clerical department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker's office, or exchange, or such other establishment or class thereof as the Provincial Government may, by notification, declare to be a commercial establishment for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement;
- (3) "day" means a period of twenty-four hours beginning at midnight;
- (4) "employer" means a person owning or having charge of the business of a commercial establishment or establishment for public entertainment or amusement, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of such establishment;
- (5) "establishment for public entertainment or amusement" means a restaurant, eating-house, café, cinema, theatre and such other establishment or class thereof as the Provincial Government may, by notification, declare to be, for the purposes of this Act, an establishment for public entertainment or amusement, but does not include a shop or a commercial establishment;
- (6) "factory" means a factory as defined in, or declared to be a factory under, the Factories Act, 1934; XXV of 1934.
- (7) "half day" means a period of six consecutive hours between the hours of half past eight o'clock *ante meridiem* and half past eight o'clock *post meridiem*;
- (8) "notification" means a notification published in the *Official Gazette*;
- (9) "person employed" means—
- (i) in the case of a shop, a person wholly or principally employed in the shop in connection with the business of the shop,
 - (ii) in the case of a commercial establishment, a person wholly or principally employed in connection with the business of the establishment or in the case of a factory, a member of the clerical staff employed in such factory,
 - (iii) in the case of an establishment for public entertainment or amusement, a person wholly or principally employed in the preparation or serving of food or drink, or in attendance upon

(Sections 3, 4.)

customers, or in cleaning any part of the establishment or the utensils used therein, or as attendant, cashier, clerk, doorkeeper, operator, or usher, or in some other similar capacity,

but does not include a shop-keeper or employer or the husband, wife, child, father, mother, brother or sister of a shop-keeper or employer who lives with, and is dependent on, such shop-keeper or employer;

(10) "prescribed" means prescribed by rules made under this Act;

(11) "rules" means rules made under this Act;

(12) "shop" means any premises used wholly or in part for the wholesale or retail sale of commodities or articles, either for cash or on credit, and such other premises as the Provincial Government may, by notification, declare to be a shop for the purposes of this Act, but does not include a commercial establishment or an establishment for public entertainment or amusement;

(13) "shop-keeper" means a person owning or having charge of the business of a shop, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of a shop; and

(14) "week" means a period of seven days beginning at midnight on Saturday.

3. References to the time of day in this Act shall be deemed to be references to Indian standard time, which is five and a half hours ahead of Greenwich mean time.

References to time of day.

4. (1) The Provincial Government may, for the purposes of all or any of the provisions of this Act, by notification declare—

Powers of the Provincial Government.

(a) to be a shop, any premises which are not premises of a commercial establishment or of an establishment for public entertainment or amusement,

(b) to be a commercial establishment, any establishment which is not a shop or an establishment for public entertainment or amusement, and

(c) to be an establishment for public entertainment or amusement, any establishment which is not a shop or a commercial establishment.

(2) The provisions of this Act specified in a notification under sub-section (1) shall apply to any premises or establishment which, under the provisions of that sub-section, has been declared to be a shop or a commercial establishment or an establishment for public entertainment or amusement, as the case may be.

(Section 5.)

991 Com. of 31-3-41. (3) The Provincial Government may, by notification on account of such holiday or other occasion as may be prescribed, suspend the operation of all or any of the provisions of this Act in respect of any shop or establishment or class of shop or establishment for such period and subject to such conditions as it thinks fit.

Page 112—

In clause (a) of sub-section (1) of section 5, for the words "any Federal Railway" substitute the words "any railway administration".
(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

~~public service, any system of public conservancy or sanitation, any industry, business or undertaking which supplies power, light or water to the public and such other public utility companies or associations or classes thereof as the Provincial Government may, by notification, exempt from the operation of this Act;~~

1602 Com.
of 14-5-41.

- (c) clubs, residential hotels and boarding-houses;
- (d) stalls and refreshment rooms at railway stations, docks, wharves and airports;
- (e) establishments for the treatment or care of the sick, infirm, destitute or mentally unfit;
- (f) such shops or classes of shops, dealing mainly in vegetables, meat, fish, dairy produce, bread, pastries, sweetmeats, flowers or other perishable commodities, as the Provincial Government may, by notification, exempt from the operation of this Act so far as the sale of these articles is concerned;
- (g) shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites, so far as the sale of these articles is concerned;
- (h) shops dealing in articles required for funerals, burials or cremations so far as the sale of these articles is concerned;
- (i) shops dealing in tobacco, cigars, cheroots, cigarettes, *biris*, *pan*, liquid refreshments sold retail for consumption on the premises, ice, newspapers or periodicals, so far as the sale of these articles is concerned;
- (j) shops dealing in supplies, stores or other articles necessary for ships, so far as the sale of these articles for ships is concerned;
- (k) shops or stalls in any public exhibition or show, so far as such shops or stalls deal in retail trade which is solely subsidiary or ancillary to the main purposes of such exhibition or show;
- (l) shops or stalls in any public fair or bazar held for a charitable purpose;

of 1940.]

(Section 6.)

- (m) barbers' and hairdressers' shops;
- (n) shops dealing in petroleum products or spare parts for motor vehicles;
- (o) excise shops;
- (p) any person employed in a managerial or confidential capacity as a traveller, canvasser,

Page 113—

In section 5, in clause (p) of sub-section (1) after the word "goods", add the words and figures "except the provisions of sections 11 and 12".

(Added by West Ben. Act LXIV of 1950, section 3.)

[No. 46, dated the 9th November, 1951.]

clerk departments or such persons as the Provincial Government may, by notification, exempt from the operation of this Act;

- (r) such other establishments, shops or persons or classes of establishments, shops or persons, as the Provincial Government may, by notification, exempt from the operation of all or any of the provisions of this Act. 993 Com. of 31-3-41.

(2) Notwithstanding anything contained in sub-section (1), the Provincial Government may, by notification, declare that any shop, establishment or person specified in that sub-section shall not be exempt from the operation of such provisions of this Act as may be specified in the notification and that the provisions of this Act specified in such notification shall apply to such shop, establishment or person. 999 Com. of 1-4-41. 1604 Com. of 14-5-41.

6. (1) Every shop shall be entirely closed on at least one and a half days in each week, and every person employed in a shop shall be allowed as holidays at least one and a half days in each week: Holidays in shops.

Provided that, when there are conducted in a shop two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not apply to that shop, such shop shall, so far as the conduct of that trade or business is concerned, be exempted from the operation of this sub-section.

(2) No deduction on account of any holiday allowed under sub-section (1) shall be made from the wages of any person employed in a shop.

(3) The day and the half day on which a shop shall be entirely closed in each week shall be such day and half day as may be specified by the shop-keeper in a notice, which shall be displayed in a conspicuous place in the shop:

Provided that no shop-keeper shall, more often than once in every three months, alter the day and half day so specified.

(Sections 7, 8.)

Hours of
work in
shops.

7. (1) No shop shall remain open after the hour of eight o'clock *post meridiem*; but any customer who was being, or was waiting in the shop to be, served at such hour

Page 114—

In sub-section (1) of section 7—

(a) after the words "No shop" *insert* be opened before the hour of *meridiem* or". and

(b) for the words "such hour" in th they occur *substitute* the mentioned hour".

(Inserted and substituted by West Be 1950, section 4.)

[No. 46, dated the 9th November, *meridiem*:

Provided that in any day and in any week in which there occurs stock-taking, making-up accounts, settlement or such other business operation as may be prescribed, and during such other periods as may be prescribed, a person employed in a shop may be required or permitted to work over-time in such shop for more than ten hours in such day and for more than fifty-six hours in such week, but so that the total number of hours so worked over-time by such person does not exceed one hundred and twenty in any one year.

(3) No person employed in a shop shall be required or permitted to work in such shop—

(a) for more than seven hours in any one day, unless he has been allowed an interval for rest of at least one hour during that day, and

(b) for more than five hours in any one day, unless he has been allowed an interval for rest of at least half an hour during that day.

(4) The periods of work and intervals for rest of each person employed in a shop shall be arranged by the shop-keeper so that together they do not extend over more than twelve hours in any one day:

Provided that, if on any day a shop is entirely closed for a continuous period of not less than three hours prior to the hour specified in sub-section (1), such periods of work and intervals for rest may together extend over not more than fourteen hours in that day.

Holidays
in com-
mercial
estab-
lishments.

8. (1) Every person employed in a commercial establishment shall be allowed as holidays at least one and a half days in each week:

Provided that, when there are conducted in a commercial establishment two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not apply to that commercial establishment, such

of 1940.]

(Sections 9—11.)

commercial establishment shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

(2) No deduction on account of any holiday allowed under sub-section (1) shall be made from the wages of any person employed in a commercial establishment.

9. (1) Every person employed in an establishment for public entertainment or amusement shall be allowed as holidays at least one and a half days in each week :

Holidays in establishments for public entertainment or amusement.

Provided that, when there are conducted in an establishment for public entertainment or amusement two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not apply to that establishment, such establishment shall, so far as conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

(2) No deduction on account of any holiday allowed under sub-section (1) shall be made from the wages of any person employed in an establishment for public entertainment or amusement.

10. (1) No person employed in an establishment for public entertainment or amusement shall be required or permitted to work in such establishment for more than ten hours in any one day :

Hours of work in establishments for public entertainment or amusement.

Provided that, during such periods as may be prescribed,

Page 115—

After section 10 insert the following section, namely:—

10A. Notwithstanding anything contained in this “Special provisions Act—
for young persons.

(a) no young person employed in a shop or establishment for public entertainment or amusement shall be required or permitted to work in such shop or establishment for more than seven hours in any one day or for more than forty hours in any one week; and

(b) the periods of work of young persons in such shop or establishment during each day shall be so fixed that no period shall exceed four hours and that no such person shall work for more than four hours before he has had an interval for rest of at least one hour.”.

(Inserted by West Ben. Act LXIV of 1950, section 5.)

[No. 46, dated the 9th November, 1951.]

11. All wages payable to any person employed in a shop, commercial establishment or establishment for public entertainment or amusement shall be payable not later than the tenth day of the month immediately succeeding that in respect of which such wages are payable.

Payment of wages.

In section 12—

(4) in clause (a),—

Leave.

(i) omit the words "a total period not exceeding"; and

Page 116—

In section 12 for the word "one-quarter" substitute the word "one-half".

(Substituted by West Ben. Act LXIV of 1950, section 7.)

[No. 46, dated the 9th November, 1951.]

Page 116—

After section 13 insert the following section, namely:—

"13A. (1) No person who has been employed in a shop or establishment for public entertainment or amusement for a continuous period of not less than twelve months, shall, without sufficient cause, have his services terminated until he has been given one month's previous notice or has been paid one month's wages in lieu of such notice.

(2) Any person employed in such shop or establishment whose services have been terminated in contravention of the provisions of sub-section (1) may make an application to a Presidency Magistrate or a Magistrate of the First Class alleging such termination and if such Magistrate is satisfied that the services of such person have been terminated without sufficient cause, he may, for reasons to be recorded in writing, direct that the shopkeeper or the employer shall pay one month's wages as compensation to such person and thereupon the shopkeeper or the employer shall pay to such person the amount of compensation so directed to be paid.

(3) The amount of compensation payable under this section shall, for purposes of its recovery, be deemed to be a fine imposed under this Act.

(4) For the avoidance of doubt it is hereby declared that the provisions of sub-sections (2) and (3) shall be in addition to and not in derogation of the provisions of section 17 and that nothing in sub-section (2) of section 18 shall be deemed to require any complaint to be made under that sub-section before an application is made under sub-section (2)."

(Inserted by West Ben. Act LXIV of 1950 section 8

[No. 46, dated the 9th November, 1951.]

Pages 116-117—

In section 16, for the words beginning with "of that place and of any prescribed record, register" and ending with "explanation of any prescribed record, register or notice" substitute the following words, namely:—

"as may be prescribed, of that place and of any document therein, including in particular any prescribed record, register or notice or any municipal licence, account book or ledger and may require such explanation of any such document".

(Substituted by West Ben. Act LXIV of 1950, section

[No. 46 dated the 9th November, 1951.]

of 1940.]

(Sections 17—21.)

prescribed, and may require such explanation of any prescribed record, register or notice as he may consider neces-

Page 117—

In section 17—

(a) in sub-section (1), for the word and figures “or 10”, substitute the figures, letters, words and brackets “10, 10A, 13A or sub-section (2) of section 20”; and

alties.

(b) in sub-section (2),—

(i) for the words “prescribed record, register or notice” substitute the words and figures “document referred to in section 16”; and

(ii) for the words “produce it” substitute the words “produce such document or give explanation thereof”.

(Substituted by West Ben. Act LXIV of 1950, section 10.)

[No. 46, dated the 9th November, 1951.]

Page 117—

Renumbered section 20 as sub-section (1) of that section and add the following sub-section thereafter, namely:—

“(2) No person shall interfere with the enjoyment of any right or privilege protected under sub-section (1).”.

(Renumbered and added by West Ben. Act LXIV of 1950, section 11.)

[No. 46, dated the 9th November, 1951.]

20. Nothing in this Act shall affect any right or privilege to which any person employed in any shop, commercial establishment or establishment for public entertainment or amusement is entitled at the date of the commencement of this Act under any other law for the time being in force or under any contract, custom or usage which is in force on that date, if such right or privilege is more favourable to him than any right or privilege conferred upon him by this Act.

Saving of certain rights and privileges.

21. (1) The Provincial Government may, after previous publication, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the of the foregoing power, such rules may provide for—

(a) the holidays and other occasions on account of which a notification may be issued under sub-section (3) of section 4;

(Section 21.)

- (b) the business operations in connection with which, and the periods during which, persons employed in shops and establishments for public entertainment and amusement may work over-time or in excess of the limit provided respectively in sub-section (2) of section 7, and sub-section (1) of section 10;
 - (c) the manner of calculating ordinary rates of wages for the purposes of section 13;
 - (d) the records and registers to be maintained, and the notices to be displayed, by a shop-keeper and an employer under section 14;
 - (e) the manner of appointment and qualifications of Inspectors appointed under section 15;
 - (f) the manner in which Inspectors appointed under section 15 shall exercise the powers conferred by section 16.
- (3) In making any rule under this section the Provincial Government may direct that any person committing a breach thereof shall, on conviction, be punishable with fine, which may extend to fifty rupees, and where the breach is a continuing one, with a further fine which may extend to ten rupees for every day, after the first, during which the breach continues.

Bengal Act XXI of 1940.

THE BENGAL CO-OPERATIVE SOCIETIES ACT, 1940.

PREAMBLE.

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6. Act VII of 1913 not to apply.
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12. Conditions of registration.
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Section.

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Bengal Act XXI of 1940.¹

THE BENGAL CO-OPERATIVE SOCIETIES ACT, 1940.

[1st May, 1941.]

An Act to amend the law relating to co-operative societies in Bengal.

WHEREAS it is expedient to make further provision for the formation and working of co-operative societies, and for the promotion of thrift, self-help and mutual aid among persons of moderate means with needs and interests in common, to the end that better conditions of living and better methods of production and business may thereby result, and for that purpose to amend the law relating to co-operative societies in Bengal;

It is hereby enacted as follows:—

CHAPTER F.

PRELIMINARY.

1. (1) This Act may be called the Bengal Co-operative Societies Act, 1940.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

Short title, extent and commencement.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

- (a) “arbitrator” means a person appointed under clause (c) of sub-section (1) of section 87 to decide any dispute referred to him;
- (b) “audit officer” means a person authorised under section 76 by general or special order to audit the accounts of a co-operative society;
- (c) “by-laws” means the by-laws registered or deemed to have been registered under this Act, and includes a registered amendment of the by-laws;
- (d) “central co-operative land mortgage bank” means a co-operative society, the objects of which include the creation of funds to be lent to co-operative land mortgage banks;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 7th July, 1938; the Report of the Select Committee was presented to the Assembly on the 19th December, 1938; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 3rd August, 1938, 19th December, 1938, and 17th, 18th, 22nd, 23rd, 24th, 25th, 29th, 30th and 31st July and 1st August, 1940; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council, held on the 12th, 14th, 19th, 27th, 28th and 29th August, 2nd, 3rd, 4th, 5th, 9th, 10th, 11th, 12th, 15th and 19th September, 1941.

²See footnote 2 on page 1, ante.

³The Act came into force on the 2nd July, 1942, vide Notification No. 1041CS., dated the 29th June, 1942, published in the *Calcutta Gazette*, dated the 2nd July, 1942, Part I, page 1636.

(Chapter I.—Preliminary.—Section 2.)

- (e) “co-operative land mortgage bank” means a co-operative society, the objects of which include the creation of funds to be lent to members on long terms upon mortgage of their immovable property;
- (f) “co-operative society” means a society registered or deemed to be registered under this Act;
- (g) “co-operative society with limited liability” means a co-operative society having the liability of its members limited by its by-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may respectively thereby undertake to contribute to the assets of the society in the event of its being wound up;
- (h) “co-operative society with unlimited liability” means a co-operative society having, subject to its by-laws, an unlimited liability of its members to contribute jointly and severally any deficiency in the assets of the society;
- (i) “co-operative year” means such period of twelve months as may be prescribed for keeping the accounts of a co-operative society;
- (j) “dispute” means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society ¹[whether such claim be admitted or not];
- (k) “financing bank” means a co-operative society, the objects of which include the creation of funds to be lent to other co-operative societies;
- (l) “liquidator” means a person appointed under section 90 to wind up the affairs of a co-operative society;
- (m) “managing committee” means the committee of management of a co-operative society constituted under section 23;
- (n) “member” includes a person joining in an application for registration of a society and a person admitted to membership after registration in accordance with the rules and by-laws;
- (o) “net profits” means profits after deduction of establishment charges, contingent charges, interest payable on loans and deposits, audit fees and such other sums as may be prescribed;
- (p) “officer” includes a president, vice-president, chairman, vice-chairman, secretary, assistant secretary, manager, treasurer, member of a managing committee, auditor elected from among the members and any other person empowered under the rules or by-laws to give directions in regard to the business of a co-operative society;

¹Added by the 1st Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

(Chapter I.—Preliminary.—Sections 3—6.)

- (q) "prescribed" means prescribed by rules made under this Act;
- (r) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act ¹[and includes any person appointed to assist the Registrar on whom all or any of the powers or duties of the Registrar referred to in section 10 have been or has been conferred or imposed under clause (a) of that section];
- (s) "rules" means rules for the time being in force made under this Act;
- (t) "Trustee" means the person appointed to be a Trustee under sub-section (1) of section 34.

3. [Repeal]:—Rep. by the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

II of 1912.

4. (1) Every society existing at the commencement of this Act which has been registered or deemed to have been registered under the Co-operative Societies Act, 1912, shall be deemed to be registered under this Act; and its by-laws shall, in so far as they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded and shall to such extent be deemed to be registered under this Act.

Saving of existing societies, etc.

(2) All appointments, rules and orders made, all notifications and notices issued, all transactions entered into and all suits and other proceedings instituted under the Co-operative Societies Act, 1912, shall be deemed, so far as may be, to have been respectively made, issued, entered into or instituted under this Act.

5. All references to the Co-operative Societies Act, 1912, occurring in any enactment ²* * * for the time being in force in ³[West Bengal] shall, in the application of any such enactment thereto, be construed as references to this Act; and anything done or any proceeding commenced in pursuance of any such enactment on or after the commencement of this Act shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, had been a reference to this Act, and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

Construction of references to Act II of 1912.

VII of 1913.

6. The provisions of the Indian Companies Act, 1913, shall not apply to co-operative societies.

Act VII of 1913 not to apply.

¹Added by the 1st Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

²The words "made by any authority in British India and" were omitted by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³See footnote 2 on page 1, *ante*.

*(Chapter I.—Preliminary.—Chapter II.—Registration.
Sections 7—11.)*

Prohibition of the use of the word "Co-operative."

7. No person other than a co-operative society shall trade or carry on business under any name or title of which the word "co-operative" or its vernacular equivalent "samavaya" is part:

Provided that nothing in this section shall apply to the use by any person or by his successor in interest of any name or title under which he lawfully traded or carried on business at the commencement of this Act.

Power to exempt co-operative societies from the provisions of the Act.

8. (1) The Provincial Government may, by rules—

(a) exempt any co-operative society or class of such societies from the application of any of the provisions of this Act or of any rules made thereunder, or

(b) direct that any of such provisions shall apply to such society or class of societies to such extent as may be specified in the rules.

(2) The power to make rules conferred by sub-section (1) shall be subject to the condition that no rule be made to the prejudice of a co-operative society without giving such society an opportunity to represent its case.

CHAPTER II.

REGISTRATION.

Appointment of Registrar and of persons to assist him.

9. The Provincial Government may appoint a person to be Registrar of Co-operative Societies for ¹[West Bengal] and may appoint persons to assist him.

Conferment of powers of Registrar.

10. Subject to the rules, the Provincial Government may, by general or special order in this behalf, confer all or any of the powers ²[or impose all or any of the duties] entrusted to the Registrar by or under this Act, other than those specified in the Second Schedule,—

(a) upon any person appointed under section 9 to assist the Registrar; and

(b) upon any co-operative society in respect of any other co-operative society which is a member of the co-operative society first mentioned.

Societies which may be registered.

11. (1) Subject to the provisions of this Act and of any rules, a society which has as its object the promotion of the common interests of its members in accordance with co-operative principles or a society established with the object of facilitating the operation of such a society, including a society formed by the division of an existing co-operative society or amalgamation of existing co-operative societies, may be registered under this Act with or without limited liability.

¹See footnote 2 on page 1, *ante*.

²Inserted by the 1st Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

(Chapter II.—Registration.—Sections 12—17.)

(2) The word "limited" shall be the last word in the name of a society registered under this Act with limited liability.

12. Unless the Provincial Government by general or special order otherwise directs, a society shall not be registered under this Act—

Conditions
of registra-
tion.

(a) with limited liability, if its objects include the creation of funds to be lent to its members, and if—

(i) it has any withdrawable share capital; or

(ii) the majority of the members are agriculturists and no member is a co-operative society; or

(b) with unlimited liability, if any member is a co-operative society.

13. An application for registration of a society shall be made to the Registrar in the prescribed manner and shall be accompanied by a copy of the proposed by-laws; and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

Applica-
tions for
registra-
tion.

14. The Registrar shall decide all questions as to whether the application complies with the provisions of this Act and the rules and whether the objects of the society are in accordance with section 11.

Registrar
to decide
certain
questions.

15. If the Registrar is satisfied that the application complies with the provisions of this Act and the rules and that the proposed by-laws are not contrary thereto, he shall, unless for reasons to be recorded in writing he thinks fit to refuse, register the society and its by-laws.

Registra-
tion.

16. A certificate of registration signed by the Registrar shall be issued to the society and shall be conclusive evidence that the co-operative society therein mentioned is a co-operative society duly registered under this Act and that its by-laws are as attached to the certificate, unless it is proved that the registration of the society has been cancelled or that the by-laws have been amended in accordance with section 17 or section 18.

Evidence
of registra-
tion.

17. (1) No amendment of any by-law of a co-operative society, whether by way of addition, cancellation or alteration, shall be valid until such amendment has been registered under this Act.

Amend-
ment of
by-laws of
a co-oper-
ative
society.

(2) Every proposal for such amendment, framed in accordance with the rules, shall be forwarded to the Registrar; and if the Registrar is satisfied that the proposed amendment is not contrary to the provisions of the Act or the rules, he shall, unless for reasons to be recorded in writing he sees fit to refuse, register the amendment.

(3) The Registrar shall forward to the society a copy of the amendment thus registered, together with a certificate signed by him; and such certificate shall be conclusive evidence that the amendment has been duly registered.

(Chapter II.—Registration.—Chapter III.—Status and Management of Co-operative Societies.—Sections 18—21.)

Power of
financing
bank
to direct
amend-
ment of
by-laws.

18. (1) Subject to the rules, if it appears to a financing bank that an amendment of the by-laws of a co-operative society which is a member and a debtor of such bank is necessary or desirable in the interests of such society, it may, in the prescribed manner, call upon the society to make the amendment within such time as it may specify.

(2) If the society fails to make the amendment within the time specified, the financing bank may, after affording the society an opportunity of being heard, forward to the Registrar the amendment which it considers necessary or desirable, and the Registrar, if satisfied that the amendment is not contrary to the provisions of the Act or the rules, may thereupon register the amendment and forward to the society in the prescribed manner a copy thereof, together with a certificate signed by him which shall be conclusive evidence that the amendment has been registered; and such amendment shall thereupon be binding upon the society and its members.

CHAPTER III.

STATUS AND MANAGEMENT OF CO-OPERATIVE SOCIETIES.

Co-oper-
ative
societies
to be
bodies
corporate.

19. The registration of a co-operative society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted.

Final
authority
of a co-
operative
society.

20. (1) The final authority of every co-operative society shall vest in the general body of members in general meeting:

Provided that, in such circumstances as may be prescribed, the final authority may vest in the delegates of such members, elected in the prescribed manner and assembled in general meeting.

(2) The general meeting shall be summoned and shall exercise its authority in such manner as may be prescribed.

Annual
general
meeting.

21. (1) A general meeting of every co-operative society shall be held once at least in every co-operative year for the purpose of—

(a) electing members of the managing committee and such other officers as may be provided in the by-laws,

(b) considering the audit report referred to in section 79, and

(c) considering any other matter which may be brought forward in accordance with the by-laws.

of 1940.]

(Chapter III.—Status and Management of Co-operative Societies.—Sections 22—24.)

(2) Such meeting shall be held not more than fifteen months after the date of the last preceding meeting held under sub-section (1) and, unless the Registrar on special grounds extends the period, within three months of the date prescribed for the receipt by the co-operative society of the audit report referred to in section 79:

Provided that the Registrar may, if he thinks fit, permit such meeting to be held not more than eighteen months after the date of the last preceding meeting held under sub-section (1).

22. (1) A special general meeting may be called at any time by a majority of the members of the managing committee and shall be called— Special general meeting.

(a) on the requisition in writing of one-third of the members of any co-operative society having not more than five hundred members or of one-fifth of the members of any other society; or

(b) at the instance of the Registrar:

Provided that, in the case of any society having more than two thousand five hundred members, a requisition under clause (a) may be presented by delegates elected in the prescribed manner.

(2) The Registrar, or any person authorised by him in this behalf by special order in writing, may call a general meeting of a co-operative society at any time, and shall call such a meeting upon failure of the society to call a meeting on a requisition by the members or at the instance of the Registrar under sub-section (1).

(3) Notwithstanding any rule or by-law prescribing the period of notice for, and the method of summoning, a general meeting, the Registrar, in the case of a meeting called at his instance under sub-section (1), or the person calling the meeting in the case of a meeting called under sub-section (2), may specify the time and place for the meeting, the manner in which it shall be summoned and the matter which shall be discussed thereat.

23. The management of every co-operative society shall vest in a managing committee constituted in accordance with the rules and by-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the by-laws. Managing committee.

24. The Provincial Government may, on the application of a co-operative society and on such conditions as may be prescribed, depute a servant of the Crown to the service of the society for the purpose of managing its affairs, and a servant of the Crown so deputed shall exercise such powers and perform such duties as may be prescribed. Power to depute servant of the Crown to manage affairs of a co-operative society.

(Chapter III.—Status and Management of Co-operative Societies.—Sections 25—28.)

Dissolu-
tion and
recon-
stitution
of ma-
naging
com-
mittee.

25. (1) If the Registrar, after an inspection under section 82 or an inquiry under section 84, is satisfied for reasons to be recorded by him in writing that the managing committee of a co-operative society is mismanaging its affairs, he may, under clause (b) of sub-section (1) of section 22, direct that, within such time as he may determine, a special general meeting of the society shall be held to dissolve and reconstitute the managing committee.

(2) In any direction made under sub-section (1) the Registrar may, for reasons to be recorded by him in writing, order that all or any of the members of the outgoing committee shall, for such period not exceeding three years as he may determine, be disqualified for election or appointment as an officer of the society.

Dissolu-
tion of
managing
com-
mittee and
appoint-
ment of
person
to manage
affairs of
co-oper-
ative
society.

26. (1) If the managing committee is not dissolved and reconstituted within the time determined, and in such manner as may be directed, by the Registrar under section 25, he may by order dissolve the managing committee, the members of which shall forthwith vacate their office; and the Registrar shall thereupon appoint one or more suitable persons, on such conditions as may be prescribed, to manage the affairs of the co-operative society for such period not exceeding one year, and to arrange for the constitution of a new managing committee by such date, as the Registrar may determine:

Provided that the Provincial Government may extend the period of one year for such further period not exceeding two years as it may think fit.

(2) An order under sub-section (1) shall be in writing, shall set forth the reasons for which it is passed, and shall be passed only after an opportunity has been given to the managing committee to state its objections thereto.

Tenure of
office of
person
appointed
under
section 26.
Manage-
ment of
co-oper-
ative
society on
dissolu-
tion of
its com-
mittee.

27. A person appointed under section 26 shall hold office until the managing committee is reconstituted or his appointment is cancelled by the Registrar.

28. During the tenure of office of a person appointed under section 26—

(a) all properties of the co-operative society shall vest in the Registrar; and

(b) subject to the control of the Registrar, and notwithstanding the preferring of any appeal under section 134, such person shall exercise all the powers and perform all the duties which may under this Act, the rules and the by-laws, be exercised or performed by the managing committee or any officer of the society.

of 1940.]

(Chapter IV.—Duties and Obligations of Co-operative Societies.—Sections 29—34.)

CHAPTER IV.

DUTIES AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES.

29. Every co-operative society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice in writing of every change thereof, within thirty days of such change, to the Registrar and to the financing bank, if any, of which it is a member.

Address of co-operative society.

30. Every co-operative society shall keep open to inspection free of charge at all reasonable times at the address of the society—

Copy of Act, etc., to be open to inspection.

- (a) a copy of this Act;
- (b) a copy of the rules;
- (c) a copy of the by-laws of the society;
- (d) a register of members; and
- (e) such other documents as may be prescribed.

31. The balance sheet authenticated by the audit officer shall be annually published by every co-operative society in the prescribed manner.

Publication of annual balance sheet.

32. A co-operative society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws, and shall in respect of such deposits or loans make such provision for the maintenance of fluid resource as may be prescribed.

Restrictions on borrowing.

33. (1) In the case of any debentures or of any class or series or issue of debentures issued under this Act, the Provincial Government shall—

Power of Provincial Government to guarantee principal and interest of debentures.

- (a) guarantee the principal thereof and the interest thereon, subject to such maximum amount of principal or such rate of interest and to such other conditions as may be prescribed; and
- (b) notwithstanding anything contained in the Indian Trusts Act, 1882, declare that such debentures shall be deemed to be included among the securities enumerated in section 20 of the said Act.

II of 1882.

(2) Such debentures shall not be issued save with the express authority of the Provincial Government.

34. (1) When a co-operative society is authorised under the provisions of sub-section (2) of section 33 to receive loans by the issue of debentures, the principal of and interest on which is so guaranteed, the Provincial Government shall appoint the Registrar or some other person to be the Trustee for the purpose of securing the fulfilment of the obligations of the society to the holders of the debentures.

Issue of guaranteed debentures.

(Chapter IV.—Duties and Obligations of Co-operative Societies.—Sections 35, 36.)

(2) With the previous sanction of the Trustee and subject to such conditions as he may impose, a co-operative society may issue debentures of one or more denominations for such period as it may deem expedient on the security of the assets of the society, including any mortgages which it holds by acceptance, assignment or transfer.

(3) Such debentures may be issued subject to either or both of the following conditions, namely:—

(a) fixing a period, not exceeding thirty years from the date of issue, during which they shall be irredeemable;

(b) reserving to the society the right to call in at any time any previously issued debentures in advance of the date fixed for redemption, after giving to the debenture-holder concerned not less than three months' notice in writing,

and may be subject also to any other conditions imposed by the Trustee.

(4) The total amount payable in respect of debentures issued by a society (including any debentures issued before the commencement of this Act) and outstanding at any time shall not exceed the total amount due on the mortgages, the amounts paid thereunder and remaining in the hands of the society or of the Trustee at such time and the value of all other assets of the society held by transfer or assignment subsisting at that time.

(5) Where a co-operative society has called in any debenture in advance of the date fixed for redemption, the society shall, subject to the previous permission of the Trustee, have the power to cancel the debenture and issue any new debenture in place of the debenture paid off or otherwise satisfied or extinguished, or to reissue the debenture either by reissuing the same debenture or by issuing another debenture in its place; and by virtue of such reissue the person entitled to such debenture shall have, and shall be deemed to have always had, the same rights and priorities, if any, as if the debenture had not been previously issued.

**Trustee
to be a
corpora-
tion sole.**

35. The Trustee appointed under section 34 shall be a corporation sole by the name of the Trustee for the debentures in respect of which he is appointed, and as such shall have perpetual succession and a common seal and in his corporate name shall sue and be sued.

**Powers
and
functions
of Trustee.**

36. (1) The powers and functions of the Trustee shall be governed by the provisions of this Act and the instrument of trust executed between the co-operative society and the Trustee.

(2) The form of such instrument, and any modification which the parties thereto may mutually agree to make in any of its terms after its execution, shall be subject to the previous approval of the Provincial Government.

of 1940.]

(Chapter IV.—Duties and Obligations of Co-operative Societies.—Chapter V.—Privileges of Co-operative Societies.—Sections 37—42.)

37. Upon the issue of debenture under the provisions of sub-section (2) of section 34, the assets of the co-operative society, including any mortgages which it holds by acceptance, assignment or transfer, shall vest in the Trustee and the holders of debentures shall have a floating charge on all such assets, including the amounts paid under such mortgages and remaining in the hands of the Trustee or the society, and on the properties of the society.

Debenture-holders' charge on assets.

38. Notwithstanding anything contained in any other law for the time being in force, the Provincial Government may, subject to the rules grant loans to, take shares in, or give financial assistance in any other form to any co-operative society.

Power of Provincial Government to give financial assistance.

39. (1) A co-operative society shall not make loans—

- (a) to any person other than a member; or
- (b) to a member in excess either of the maximum or of the normal credit determined by the society for that member in accordance with the rules, which-ever may be prescribed; or
- (c) save with the special sanction of the Registrar given in accordance with the rules on the security of movable property.

Restrictions on lending.

(2) The Provincial Government may, by general or special order, after giving any society likely to be affected thereby an opportunity of being heard in such manner as may be prescribed, prohibit or restrict the lending of money on mortgage of immovable property by any society or class of societies other than a co-operative land mortgage bank.

40. Save as provided in sections 32 to 39 inclusive, 48 and 49, the transactions of a co-operative society with persons other than members shall be subject to such prohibitions and restrictions, if any, as may be prescribed.

Restrictions on other transactions with non-members.

41. Every officer and every member of a co-operative society shall furnish such information in regard to the transactions or working of the society as may be required of him by the Registrar or an audit officer, arbitrator, liquidator or any person conducting an inspection or inquiry under Chapter VIII.

Liability to furnish information.

CHAPTER V.

PRIVILEGES OF CO-OPERATIVE SOCIETIES.

42. (1) With the previous approval of the Registrar, a co-operative society may, by a resolution passed at a general meeting, change its name.

Change of name and its effect.

(2) Such change of name shall not affect any right or obligation of the society or of any of its members, or past

*(Chapter V.—Privileges of Co-operative Societies.—
Sections 43—45.)*

members, or of the estate of any of its deceased members; and any legal proceedings pending on the date of such change in which such society is a party may be continued by or against the society under its new name.

Change of
liability.

43. (1) Subject to the provisions of this Act and of the rules, a co-operative society, with the previous approval of the Registrar, may, by a resolution passed at a general meeting, change its form of liability.

(2) When such a resolution has been passed, the society shall give notice thereof in writing in the prescribed manner to all its members and creditors and, notwithstanding any by-law or contract to the contrary, any member or creditor shall, within six months of the service of the notice upon him, have the option of withdrawing his shares, deposits or loans. Any member or creditor who does not exercise his option within the period aforesaid shall be deemed to have assented to the change.

(3) The change shall not take effect until either—

- (a) the assent thereto of all members and creditors has been secured; or
- (b) all claims of members and creditors who exercise the option referred to in sub-section (2) have been met in full.

Co-oper-
ative
society's
power to
call for
statement
of claims.

44. (1) When a member of a co-operative society which includes among its objects the advance of loans to its members applies for a loan or when a person applies for membership of such a society, the society may in the prescribed manner serve a notice on any creditor named in the application or ascertained after subsequent inquiry, and may also publish a general notice on all creditors, requiring him or them, in the prescribed form and within the time specified in the notice, to furnish a written statement of his or their claim.

(2) When a member of a co-operative society which includes among its objects the advance of loans to its members intends to apply for a loan from any person other than the society such member shall send to the society a notice in writing stating—

- (a) his intention to apply for such loan,
- (b) the amount of the loan for which he intends to apply, and
- (c) the object of taking the loan.

Co-oper-
ative
society's
power to
call for
notice of
rent suit.

45. A co-operative society which includes amongst its objects the advance of loans to its members, and the financing bank, if any, of which such society is a member, may by a notice served in the prescribed manner upon the landlord of any member of such society require the landlord to furnish to such society or the financing bank or both notice of any rent suit instituted by him against such member.

of 1940.]

*(Chapter V.—Privileges of Co-operative Societies.—
Sections 46, 47.)*

IX of
1908.

46. Notwithstanding any of the provisions of the Indian Limitation Act, 1908, the period of limitation for the institution of a suit to recover any sum, including interest thereon, due to a co-operative society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of the society. Limitation.

Act V of
1908.
VIII of
1885.

47. (1) Notwithstanding anything contained in sections 60 and 61 of the Code of Civil Procedure, 1908, or in the Bengal Tenancy Act, 1885, but subject to any claim of the Provincial Government in respect of land revenue, or any sum recoverable as land revenue or as a public demand, or of a landlord in respect of rent or any sum recoverable as rent, any debt or outstanding demand due to a co-operative society by any member, past member or the estate of any deceased member shall be a first charge— Debts due to co-operative societies to be a first charge.

(a) if such debt or demand is due in respect of the supply of, or any loan to provide the means of paying for seed, manure, labour, subsistence, fodder for cattle or any other thing incidental to the conduct of agricultural operations,—upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan became repayable;

(b) if such debt or demand is due in respect of the supply of, or of any loan to provide the means of paying for, irrigation facilities,—upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan became repayable, or upon the crops or agricultural produce of the land so provided with irrigation facilities;

(c) if such debt or demand is due in respect of the supply of, or any loan for the purchase of cattle, agricultural implements or warehouses for the storage of agricultural produce—in the manner and to the extent aforesaid upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member and also upon the cattle agricultural implements or warehouses thus supplied or purchased wholly or in part from any such loan;

(d) if such debt or demand is due in respect of the supply of, or any loan for the purchase of raw materials, industrial implements, machinery, workshops, warehouses or business premises,—upon the raw material or other things supplied or purchased by such member, past member or

(Chapter V.—Privileges of Co-operative Societies.—
Section 48.)

deceased member wholly or in part from any such loan and also upon any articles manufactured from raw materials or with implements or machinery so supplied or purchased wholly or in part from any such loan;

(e) if such debt or demand is due in respect of any loan for the purchase or redemption of land, upon the land purchased or redeemed by such member, past member or deceased member from any such loan; and

(f) if such debt or demand is due in respect of any loan for the purchase or construction of any house or building or any portion thereof or in respect of the supply of materials for such construction,—upon the house or building so purchased or constructed by such member, past member or deceased member from any such loan or material.

(2) Nothing in clauses (a), (c), (d), (e) or (f) of sub-section (1) shall affect the claims of any *bona fide* purchaser or transferee for value without notice of any such crops or other agricultural produce, fodder, cattle, agricultural or industrial implements, machinery, raw materials, workshops, warehouses, premises, manufactured articles, houses, buildings or land.

Levy of
water
rate on
non-
members.

48. (1) A co-operative society, an object of which is the provision of irrigational facilities to the cultivable land of its members, may in the prescribed form apply to the Collector for demarcation of the area irrigable from any source of irrigation other than a tank which has, under section 4 of the Bengal Tanks Improvement Act, 1939, been declared to be a derelict tank.

Ben. Act
XV of
1939.

(2) Such area shall be termed the "irrigable area".

(3) On receipt of such application, the Collector shall, after giving notice in the prescribed manner, cause to be prepared, in the prescribed form, by an officer subordinate to him, a map of the irrigable area and a statement of the cultivable lands included therein; and such map and statement shall be published in the prescribed manner.

(4) If the lands possessed by the members of such society comprise not less than sixty *per centum* of the cultivable lands included in the irrigable area, such society may, subject to rules made in this behalf, levy a water rate upon any non-member of the society possessing within such area cultivable land which is benefited by the irrigational facilities referred to in sub-section (1).

(5) Such water rate shall be recoverable in the manner provided in this Act for the recovery of sums due to the society by the members, past members and deceased members thereof.

of 1940.]

(Chapter V.—Privileges of Co-operative Societies.—
Sections 49—51.)

49. (1) A co-operative society, an object of which is the provision of embankment protection facilities to the lands of its members, may in the prescribed form apply to the Collector for demarcation of the area protected by any embankment. Levy of embankment protection rate on non members.

(2) Such area shall be termed the "protected area."

(3) On receipt of such application, the Collector shall, after giving notice in the prescribed manner, cause to be prepared in the prescribed form, by an officer subordinate to him, a map of the protected area and a statement of the lands included therein; and a copy of such map and statement shall be published in the prescribed manner.

(4) If the lands possessed by the members of such society comprise not less than sixty *per centum* of the lands included in the protected area, such society may, subject to rules made in this behalf, levy an embankment protection rate upon any non-member of the society possessing land within such area.

(5) Such embankment protection rate shall be recoverable in the manner provided in this Act for the recovery of sums due to the society by the members, past members and deceased members thereof.

50. A co-operative society shall have a charge upon the share or interest in the capital and the deposits of a member or a past or deceased member and upon any amount payable out of profits to a member or past member or the estate of a deceased member in respect of any debt due Charge and set off in respect of share or interest members.

Supplement to the Bengal Code, 5th Edition.

Page 139—

For section 51 substitute the following section, namely:—

"Deduction of dues to Co-operative Societies from salaries of members.

51. If a member of a co-operative society, who is in the employment of the Government or of any local authority or of any other person, takes a loan from a co-operative society in terms of a written contract, providing that the loan is to be repaid by instalments and that the society shall be entitled to recover such instalments from his salary, the person who disburses any amount payable to such member as salary in respect of such employment shall, on demand from the society, deduct the amount of such instalment from the amount disbursed to such member as salary as often as is necessary until the loan is repaid and shall after any such deduction is made forthwith remit to the society the amount so deducted: word brackets, a Act, nstitu- eventh

Provided that nothing in this section shall apply to persons employed upon railways within the meaning of the Constitution or in mines or oil fields."

(Substituted by West Ben. Act VII of 1953, section 2.)

[No. 50, dated the 26th May, 1953.]

*(Chapter V.—Privileges of Co-operative Societies.—
Sections 52—54.)*

Exemption from compulsory registration of instruments relating to shares and debentures of co-operative society.

52. Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Indian Registration Act, 1908, shall apply to— XVI of 1908.

- (a) any instrument relating to shares in a co-operative society, notwithstanding that the assets of such society consist wholly or in part of immovable property; or
- (b) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (c) any endorsement upon or transfer of any debenture issued by any such society.

Power to remit certain duties, fees, etc.

53. (1) The Provincial Government may by general or special order in the case of any co-operative society or class of co-operative societies remit any tax, cess or fee payable under any law for the time being in force or the rules framed thereunder in respect of which the Provincial

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In clause (a) of sub-section (2) of section 53, for the words and figures "item 57 or item 59 in List I in the Seventh Schedule to the Government India Act, 1935" substitute the words and figures "entry 91 or entry 96 List I in the Seventh Schedule to the Constitution".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

such society, in cases where, but for such remission, the co-operative society, officer or member thereof, as the case may be, would be liable to pay the stamp duty chargeable under any law for the time being in force in respect of such instrument, and

- (b) any fee payable by a co-operative society under any law for the time being in force for the registration of documents.

Power of Registrar to sanction a compromise between a co-operative society and its creditors.

54. (1) Notwithstanding anything contained in this Act, where a compromise or arrangement is proposed between a co-operative society and its creditor or creditors or any class of them the Registrar, upon an application made in the prescribed manner by the society or by any creditor or, in the case of a society in respect of which an order has been passed for the winding up thereof, by the liquidator, may order a meeting of the creditors or the class of creditors, as the case may be, to be called, held and conducted in such manner as may be prescribed.

of 1940.]

(Chapter V.—Privileges of Co-operative Societies.—
Chapter VI.—Property and Funds of Co-operative
Societies.—Sections 55, 56.)

(2) If a majority in number of the creditors or the class of creditors, as the case may be, representing claims to three-fourths of the debts due by the society to the creditors or the class of creditors, present either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Registrar, upon publication in the prescribed manner, be binding on all the creditors or the class of creditors, as the case may be, and also on the society or, in the case of a society in respect of which an order has been passed for the winding up thereof, on the liquidator and on all persons who have been or may be required by the liquidator under section 91 to contribute to the assets of the society.

CHAPTER VI.

PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES.

55. A co-operative society may invest or deposit its funds— Investment
of funds.

II of 1882.

- (a) in a Government Savings Bank; or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or
- (c) with the sanction of the Registrar, in the shares or debentures or on the security of any other co-operative society with limited liability; or
- (d) in any other manner prescribed.

56. (1) Every co-operative society shall maintain a reserve fund in respect of the profits, if any, derivable from its transactions. Reserve
fund.

(2) Of the net profits of a co-operative society in each year there shall be carried to the reserve fund not less than twenty-five *per centum* or such higher proportion as may be prescribed for such society or class of societies.

(3) Save to the extent that, and in such manner as, may be prescribed no part of its reserve fund shall be used in the business of a co-operative society.

(4) Subject to the rules, any portion of the reserve fund not used in the business of the society, shall be invested or deposited—

- (a) in the Government Savings Bank; or
- (b) in any of the securities specified in section '[20] of the Indian Trusts Act, 1882, other than those specified in clause (c) of that section; or
- (c) in any other bank approved by the Registrar.

¹Substituted by the 1st Schedule to the West Bengal Laws (Amendment and Repeal) Act 1947 (West Ben. Act XII of 1947 for the figure "29".

(Chapter VI.—Property and Funds of Co-operative Societies.—Sections 57—59.)

Distribu-
tion of
profits.

57. (1) Save as may be prescribed, no distribution of profits shall be made in the case of a co-operative society with unlimited liability; and save as provided in this section, no part of the funds of a co-operative society shall be divided by way of dividend or bonus or otherwise among its members.

(2) No dividend or bonus shall be paid—

- (a) otherwise than out of profits certified by the audit officer to have been actually realised; or
- (b) without the previous sanction of the Registrar, if the audit officer reports that any asset is bad or doubtful and also recommends that such sanction is necessary:

Provided that the audit officer shall not so recommend if such asset is adequately covered.

(3) Subject to the provisions of sub-section (2), after the proportion required by sub-section (2) of section 56 has been carried to the reserve fund from the net profits of any year, the balance of such profits, together with undistributed profits of past years if any, may, to such extent and under such conditions as may be prescribed, be distributed as dividend among the members or paid as bonus or remuneration to a member or employee for any specific service rendered to the society.

(4) No contribution under section 58 shall be paid otherwise than out of profit actually realised.

Contribu-
tion to
charitable
purposes.

58. After there has been carried to the reserve fund the proportion of the net profits of any year required by sub-section (2) of section 56, a co-operative society—

(a) shall, in the manner prescribed, contribute an amount not exceeding five *per centum* of the balance of the year's remaining net profits for co-operative education or for such other co-operative purpose as may be prescribed, and

(b) may in accordance with the rules contribute not more than ten *per centum* of such balance for any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

VI of 1890.

Provident
fund.

59. (1) A co-operative society may establish a provident fund for its members, officers or servants from the contributions of such members, officers or servants, as the case may be, and, after there has been carried to the reserve fund the proportion of net profits in any year required by sub-section (2) of section 56 and after there has been paid the contribution required by clause (a) of section 58, may make such contribution to the provident fund as may be provided for in the rules or by-laws.

(2) Such provident fund shall not be used in the business of the society, but shall be invested or deposited in one or more of the ways specified in sub-section (4) of section 56.

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Sections 60—64.)

CHAPTER VII.

PRIVILEGES, LIABILITIES AND OBLIGATIONS OF MEMBERS OF CO-OPERATIVE SOCIETIES.

60. (1) Subject to the rules relating to voting by delegates, no member of a co-operative society shall have more than one vote in its affairs: Votes of members.

Provided that in the case of an equality of votes the chairman shall have a second or casting vote.

(2) A co-operative society which is a member of another co-operative society may appoint one of its members not disqualified for such appointment under any rule or by-laws to vote in the affairs of such other society.

61. No member of a co-operative society shall exercise the rights of a member until he has made such payment to the society in respect of membership or acquired such interest in the society as may be provided for in the rules or by-laws. Members not to exercise rights till due payment made.

62. (1) A full, true and accurate statement of his assets and liabilities shall be furnished— Members to furnish information as to their financial position and alienation of their immovable property.

(a) by an applicant for membership of a co-operative society with unlimited liability, together with his application;

(b) by a member of a co-operative society with unlimited liability when required to do so by the Registrar or any person authorised by him by a general or special order or by the financing bank; and

(c) by a member of any other society, together with any application for a loan or for acceptance as a surety.

(2) A member of a co-operative society shall, before the completion of each such transaction, furnish to the society of which he is a member full, true and accurate information regarding any sale, mortgage or transfer in any form whatsoever of his immovable property or any portion or share thereof and regarding any debt proposed to be incurred on the security of such property.

63. A loan advanced by a co-operative society to a member thereof shall be utilised by him for the purpose for which it was advanced and, if not so utilised, shall be refunded by him immediately on its recall, in the prescribed manner, by the society. Loans to be used for the object for which advanced.

64. Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of section 50, the share or interest of a member in the capital of a co-operative society or in any provident fund established under section 59 shall not be liable to attachment or Share or interest not liable to attachment.

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Sections 65—69.)

sale under any decree or order of a court in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909, nor a receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest. III of
1909.
V of 1920.

Liability of
members.

65. The members of a co-operative society shall, upon the winding up of the society, be jointly and severally liable to contribute towards any deficiency in the assets of the society—

- (a) in the case of a society with unlimited liability without limit; and
- (b) in the case of a society with limited liability, subject to such limitation of amount as may be provided in the by-laws.

Liability
of past
member
and of
estate of
deceased
member.

66. The liability of a past member and of the estate of a deceased member for the debts of a co-operative society as they existed at the date of his ceasing to be a member or of his death, as the case may be, shall continue for a period of two years from the said date.

Restric-
tions on
interest of
members of
society
with
limited
liability
and share
capital.

67. Where the liability of a member of a co-operative society is limited by shares, no member other than another co-operative society shall—

- (a) hold more than such portion of the share capital of the society as, subject to a maximum of one-fifth, may be prescribed; or
- (b) have or claim any interest in the shares of the society exceeding one thousand rupees.

Restric-
tions on
transfer of
share or
interest.

68. (1) The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to the provisions of this Act and to such conditions as to maximum holding as may be prescribed and, in the case of a member of a society with limited liability, shall require the approval of the society.

(2) No transfer or charge of his share or interest by a member of a society registered with unlimited liability shall be valid unless—

- (a) he has held such share or interest (save in the case of transfers under any of the provisions of sections 69, 70, 71, 73 or 74), for not less than one year; and
- (b) the transferee or mortgagee is either a member of such society or a person whose application for membership has been accepted or another co-operative society.

Nomina-
tion of
transferee.

69. If the by-laws of a co-operative society so permit, any member of the society may, in accordance with the rules, nominate a person in whose favour the society shall dispose of the share or interest of such member on his death.

of 1940.]

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Sections 70, 71.)

70. (1) When any member of a co-operative society dies his share and interest in the society shall, subject to the provisions of sections 50 and 68 and to the further provisions of this section, be transferred—

Disposal of deceased member's share or interest.

- (a) to the person, if any, nominated in accordance with the provisions of section 69; or
- (b) if there be no such nominee or, if the existence and residence of such nominee cannot be ascertained by the managing committee, or if for any other cause such transfer cannot be made without unreasonable delay, to the person who (subject to the production by him of probate, letters of administration or succession certificate) appears to the managing committee to be entitled in accordance with the rules to possession of such share or interest as part of the estate of the deceased member; or
- (c) on the application of the person referred to in clause (b) within three months of the death of the deceased member, to any person specified in the application.

(2) If the share or interest of the deceased cannot be legally transferred in accordance with the provisions of sub-section (1), or if the person to whom the share or interest is payable under that sub-section within one year of the death of the deceased member claims payment of the value of such share or interest, or if the society in accordance with the rules and by-laws decides to proceed according to this sub-section—

- (a) the share shall be transferred to some other person qualified in accordance with the provisions of section 68 to be the transferee of the share, on receipt from such person of the value thereof; and
- (b) the value of the share or interest of the deceased member determined in accordance with the rules shall be paid to the person nominated in accordance with the provisions of section 69 or to the person appearing to be entitled to possession of such share or interest as aforesaid, after deducting the amount of any sum payable under this Act to the society from the estate of the deceased member.

71. When a member of a co-operative society is expelled or resigns in accordance with the rules or the by-laws, or when a member becomes insane—

Disposal of share or interest of expelled, resigned or insane member.

- (a) his share or interest shall be transferred to another person qualified to be the transferee in accordance with the provisions of section 68, and the value thereof determined in accordance with the rules shall be paid to such member or, if

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Section 72.)

he is insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912; or

- (b) in the case of a society, with unlimited liability, if the by-laws so provide, the value of his share or interest determined in accordance with the rules shall be paid to him or, if he is insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912.

Restriction on transfer of possession of and interest in land held under a co-operative society.

72. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force—

- (1) a member of a co-operative society the object of which is the reclamation and colonization of land or the acquisition of land and the leasing thereof to its members, shall not be entitled to transfer his possession of or interest in any land held by him under the society, except to the society or, with the previous approval of the society given in accordance with its bye-laws, to a member thereof;
- (2) when the membership of a member of a co-operative society specified in clause (1) terminates by reason of his death, expulsion, resignation or insanity or any other cause, his possession of and interest in any land held by him under the society shall vest in his heir, executor or administrator or in the person, if any, nominated by him under section 69, if such heir, executor, administrator or person is willing to become a member of the society and is eligible for membership in accordance with the bye-laws of the society;
- (3) if the heir, executor, administrator or person referred to in clause (2) does not become a member of the co-operative society, the possession of and interest in the land of the deceased, expelled, resigned or insane member shall vest in the society, which shall pay to such heir, executor, administrator or person, as the case may be, a sum equivalent to the value of the land as determined in accordance with the rules; and
- (4) no land held under a co-operative society specified in clause (1) by a member thereof, or vested under clause (2) in the heir, executor or administrator of such member or in any person nominated by such member under section 69 shall be attachable in any suit or proceeding for the recovery of any debt other than a debt due to the society or to a member thereof.

Page 147—

To section 73, add the following proviso, namely:—

“Provided that where the transfer of such share or interest is not possible within a reasonable time from the date on which the order directing the winding up of the society takes effect, the value, determined in accordance with the rules, of such share or interest, may, with the previous approval of the Registrar, be set off by the liquidator against any sum which is due by the society being wound up, to the co-operative society with limited liability of which such society is a member.”

Disposal of share or interest of a member of a wound up co-operative society.

(Added by West Ben. Act XXXIII of 1950, section 2.)

[No. 45, dated the 2nd December, 1950.]

to the society, shall, subject to the provisions of section 50, be paid—

Disposal of moneys due to a deceased, expelled, resigned or insane member.

- (a) in the case of a deceased member, to the person to whom the share and interest are transferred or their value is paid in accordance with the provisions of section 70;
- (b) in the case of a member who has been expelled or has resigned from a society, to him; and
- (c) in the case of a member who has become insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912.

IV of 1912.

75. All payments and transfers made by a co-operative society in accordance with the provisions of sections 70 to 74 inclusive shall be valid and effectual against any demand made upon the society by any other person.

Bar to certain claims.

CHAPTER VIII.

AUDIT, INSPECTION AND INQUIRY.

76. (1) The accounts of every co-operative society shall, at least once in each year and by such date as may be prescribed, be audited by the Registrar or by an audit officer authorised by him in this behalf by general or special order in writing.

Registrar to be responsible for audit.

(2) In respect of every audit the accounts of a co-operative society shall, in the manner prescribed, pay such audit fee as may be prescribed.

77. If at the time of audit the accounts of a co-operative society are not complete, the Registrar or, with his approval, the audit officer may cause the accounts to be written up at the expense of the society.

Power to the Registrar to have the accounts written up.

78. (1) The audit under section 76 shall include—

Nature of audit.

- (a) a verification of the cash balances and securities;
- (b) a verification of the balance at the credit of the depositors and creditors and of the amounts due from the debtors of the society;

*(Chapter VIII.—Audit, Inspection and Inquiry.—
Sections 79—81.)*

- (c) an examination of overdue debts, if any;
- (d) a valuation of the assets and liabilities of the society;
- (e) an examination of the transactions, including the monetary transactions of the society within such limits as may be prescribed;
- (f) an examination of the statement of accounts to be prepared by the managing committee in such form as may be prescribed;
- (g) a certification of the realised profits; and
- (h) any other matter that may be prescribed.

(2) The statement of accounts thus audited, together with the modifications, if any, made therein by the Registrar, shall be final and binding on the co-operative society.

Audit
officer's
report.

79. The audit officer shall, by such date as may be prescribed, submit to the co-operative society and to the Registrar, together with the statement of accounts audited, an audit report including a statement of—

- (a) every transaction which appears to him to be contrary to law or to the rules or by-laws;
- (b) every sum which ought to have been but has not been brought into account;
- (c) the amount of any deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation;
- (d) any money or property belonging to the society which appears to have been misappropriated or fraudulently retained by any person;
- (e) any of the assets which appears to him to be bad or doubtful; and
- (f) any other matter prescribed.

Rectifica-
tion of
defects.

80. A co-operative society shall be afforded by the Registrar an opportunity of explaining any defects or irregularities pointed out by the audit officer, and thereafter the society shall, within such time and in such manner as the Registrar may direct, remedy such defects and irregularities and report to the Registrar the action taken by it thereon.

Constitu-
tion of an
authority
to
supervise
working
of co-
operative
societies.

81. (1) The Provincial Government may constitute an authority to appoint and control in such manner as may be prescribed, the staff required for the supervision of co-operative societies, other than such staff as may be appointed by the Provincial Government for the purposes of such supervision, and such authority shall be composed of such number of persons and shall perform such other functions as may be prescribed:

1940-1

*(Chapter VIII.—Audit, Inspection and Inquiry.—
Sections 82—84.)*

Provided that, of the persons composing such authority, three-fourths shall be elected by co-operative societies in such manner as may be prescribed, and one-fourth shall be nominated by the Registrar in such manner as may be prescribed.

(2) A co-operative society shall be liable to pay, to an authority constituted under sub-section (1), such fee, in such manner, as may be prescribed.

82. (1) Every co-operative society shall be liable at any time to inspection—

Inspection
by
Registrar
or
financing
bank.

(a) by the Registrar or any person authorised by him in this behalf by general or special order; and

(b) by the financing bank, if any, of which it is a member.

(2) An inspection under this section by a financing bank shall be made by an officer of the bank or by a member of its paid staff certified by the Registrar in accordance with the rules as competent to conduct such an inspection.

(3) The result of an inspection under this section shall be communicated to the society and to the financing bank, if any, of which it is a member and, when the inspection is made by a financing bank, to the Registrar if so required by him.

83. (1) Subject to the provisions of sub-section (2), on the application of a creditor of a co-operative society, an inspection shall be made of the books of the society by the Registrar or by a person authorised by him in this behalf by general or special order in writing.

Inspection
of books
of an
indebted
co-opera-
tive
society.

(2) No such inspection shall be made unless—

(a) the Registrar, after giving the society an opportunity of being heard, is satisfied that the alleged debt is a sum then due, and that the creditor has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) the creditor deposits with the Registrar such sum as security for the costs of the inspection as the Registrar may direct.

(3) The Registrar shall communicate the result of any inspection under this section to the creditor, to the society and to the financing bank, if any, of which the society is a member.

84. (1) The Registrar may, at any time, of his own motion or at the request of the District Magistrate, hold by himself or by a person authorised by him by order in writing, an inquiry into the constitution, working and financial condition of a co-operative society.

Inquiry by
Registrar.

(Chapter VIII.—Audit, Inspection and Inquiry.—

Chapter IX.—Settlement of Disputes.—Sections 85, 86.)

(2) Such an inquiry shall be held on the application of—

- (a) the financing bank, if any, of which the society is a member;
- (b) a majority of the members of the managing committee of the society;
- (c) one-third of the members of the society, each of whom has been a member of the society for not less than twelve months immediately preceding the date of the application and shall have deposited such security for costs, if any, as the Registrar may direct;
- (d) creditors representing not less than one-half of the borrowed capital of the society, who shall have deposited such security for costs, if any, as the Registrar may direct:

Provided that, in the case of any society having more than two thousand five hundred members, an application under clause (c) may be presented by delegates elected in the prescribed manner.

(3) The Registrar shall communicate the result of any inquiry under this section to the society, to the financing bank, if any, of which the society is a member, and to the District Magistrate or the creditors, as the case may be, who applied for the inquiry.

Cost of
inspection
or inquiry.

85. (1) The Registrar may, after giving the parties an opportunity of being heard and by an order in writing stating the reasons therefor, apportion the costs of an inspection made under section 83 or of an inquiry held under section 84 or such portion of the costs as he thinks fit, between the co-operative society, the members thereof or the financing bank or the creditor or creditors applying for such inspection or inquiry, as the case may be, and the officers, former officers, members and past members of the society.

(2) No expenditure from the funds of any co-operative society shall be incurred for the purpose of defraying any costs in support of any appeal preferred by any person other than the society against an order under sub-section (1).

CHAPTER IX.

SETTLEMENT OF DISPUTES.

Disputes
to be
referred
to Regis-
trar.

86. Any dispute touching the business of a co-operative society (other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the Registrar if the parties thereto are among the following, namely:—

- (a) the society, its managing committee, any past or present officer, agent or servant or the liquidator of the society; or

*(Chapter IX.—Settlement of Disputes.—Chapter X.—
Winding up and Dissolution of Co-operative Societies.
—Sections 87—89.)*

- (b) a member, past member or person claiming through a member, past member or deceased member of the society; or
- (c) a surety of a member, past member or deceased member of the society, whether such surety is or is not a member of the society; or
- (d) any other co-operative society or the liquidator of such society.

87. (1) On receipt of a reference under section 86 the Registrar shall, subject to the rules—

Settle-
ment of
disputes.

- (a) decide the dispute himself; or
- (b) transfer it for disposal to any person authorised by the Provincial Government to exercise the powers of the Registrar in this behalf; or
- (c) refer it for disposal to one or more arbitrators to be appointed by the Registrar.

(2) Subject to the rules, the Registrar may withdraw any reference transferred or referred under sub-section (1) and may deal with it himself in the manner provided in such rules.

88. Where a dispute involves property pledged as collateral security, the person deciding the dispute may issue an award, which shall have the same force and effect as a final mortgage decree of a Civil Court having jurisdiction to make such a degree.

Force and
effect of
certain
awards.

CHAPTER X.

WINDING UP AND DISSOLUTION OF CO-OPERATIVE SOCIETIES.

89. (1) The Registrar may, and if the rules in any case so prescribe shall, by an order in writing, direct that a co-operative society shall be wound up if—

Order for
the wind-
ing up of
a co-oper-
ative
society.

- (a) after an inspection has been made under section 82 or section 83 or an inquiry has been held under section 84; or
- (b) on an application made upon a resolution carried by three-fourths of the members of the society present at a special general meeting called for the purpose; or
- (c) on his own motion in the case of a society which—
 - (i) has not commenced working; or
 - (ii) has ceased working; or
 - (iii) has share capital or members' deposits not exceeding five hundred rupees; or
 - (iv) has ceased to comply with any condition as to registration in this Act or in the rules or by-laws,

he is of the opinion that the society ought to be wound up.

(Chapter X.—Winding up and Dissolution of Co-operative Societies.—Sections 90, 91.)

(2) A copy of such order shall be communicated, in the prescribed manner, to the society and to the financing bank, if any, of which the society is a member.

(3) The order shall take effect—

- (a) where no appeal is preferred under section 134, on the expiry of the time allowed for preferring an appeal; or
- (b) where an appeal is preferred, upon rejection of the appeal by the appellate authority.

**Appoint-
ment of a
liquidator.**

90. When an order is passed under section 89 for the winding up of a co-operative society, the Registrar may, in accordance with the rules, appoint a person to be liquidator of the society and may remove such person and appoint another in his place.

**Powers of
a liquidator.**

91. (1) Notwithstanding anything contained in section 89 relating to the date on which an order for winding up a co-operative society shall take effect, a liquidator appointed under section 90 shall have power from the date of his appointment to take immediate possession of all assets, properties, effects and actionable claims of the society or to which the society is entitled and of all books, records and other documents pertaining to the business of the society.

(2) From the date on which the order directing the winding up of the society takes effect the liquidator shall, subject to the rules and under the general direction and control of the Registrar, have power, so far as is necessary for the winding up of the society, on behalf of the society to carry on the business thereof and to do all acts and execute all documents necessary to such winding up, and in particular shall exercise such of the following powers as the Registrar may from time to time direct, namely,—

- (a) to institute and defend suits and other legal proceedings;
- (b) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration;
- (c) to determine the debts due to the society by a member, past member or the estate, nominees, heirs or legal representatives of a deceased member;
- (d) to calculate the costs of liquidation and to determine by what persons and in what proportions they are to be borne;
- (e) to determine from time to time the contributions, including the items mentioned in clauses (c) and (d), to be made to the assets of the society by the members, past members or estates, nominees, heirs and legal representatives of deceased members or by the past or present officers of the society;

The Bengal Co-operative Societies Act, 1940.

of 1940.]

(Chapter X.—Winding up and Dissolution of Co-operative Societies.—Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Section 92—95.)

- (f) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;
- (g) to pay claims against the society (including interest up to the date of the order for the winding up thereof) according to their priority, in full or rateably as the assets of the society permit;
- (h) to give such directions as appear to him to be necessary in regard to the realisation, collection and distribution of the assets of the society; and
- (i) after consulting the members of the society, to dispose of the surplus, if any, remaining after paying the claims against the society.

III of
1909.
V of 1920.

92. Notwithstanding anything contained in the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, the contribution assessed by a liquidator shall rank next to debts due to the Crown or to any local authority in order of priority in insolvency proceeding.

Priority of contributions assessed by liquidator.

93. When the affairs of a co-operative society have been wound up, the liquidator shall deposit the records of the society in the prescribed manner and shall make a report to the Registrar.

Liquidator to deposit the books and submit a final report.

94. (1) The Registrar may cancel an order for the winding up of a co-operative society in any case where, in his opinion, the society should continue to exist.

Power of Registrar to cancel order of winding up or of registration of a co-operative society.

(2) In any other case the Registrar shall, after considering the report of the liquidator, if any, order the registration of the society to be cancelled.

CHAPTER XI.

SPECIAL PROVISIONS FOR CO-OPERATIVE LAND MORTGAGE BANKS.

95. (1) When a mortgage is executed in favour of a co-operative land mortgage bank for payment of a prior debt or part thereof of the mortgagor, the bank shall, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, by issuing notice in writing in the prescribed manner require any person to whom any such debt is due to receive payment of such debt or part thereof from the bank within such period as may be specified in the notice.

Right of co-operative land mortgage bank to pay prior debts of mortgagor.

(2) The person on whom such notice is served shall be bound to receive payment of the amount offered by the bank, but where there is a disagreement between the mortgagor and such person as regards the amount of the debt, or where

IV of 1882.

(Chapter XI.—*Special Provisions for Co-operative Land Mortgage Banks.*—Sections 96—99.)

the bank tenders less than the agreed amount of the debt, the receipt of the sum offered by the bank shall not prejudice the right, if any, of such person to recover the balance claimed by him.

(3) If any person fails to accept such notice or to receive such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiry of the period specified in the notice.

Restriction on mortgagor's transfer of or charge on equity of redemption.

96. Notwithstanding anything contained in any other law for the time being in force—

(1) the mortgagor of property mortgaged to a co-operative land mortgage bank shall not be entitled, after the execution of the mortgage and without the concurrence of the bank,—

(a) to transfer or mortgage his equity of redemption, or

(b) to create a charge upon such property for a period exceeding five years;

(2) the co-operative land mortgage bank shall not be entitled to give its concurrence under clause (1) without the previous sanction of the central co-operative land mortgage bank or the financing bank to which any sum is payable by it; and

(3) the central co-operative land mortgage bank or the financing bank shall, if it accords its sanction under clause (2), send an intimation thereof to the Trustee, if any, appointed under section 34..

Mortgage not to be questioned on insolvency of mortgagor.

97. Notwithstanding anything contained in the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, a mortgage, executed in favour of a co-operative land mortgage bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration, or on the ground that it was executed in order to give the bank a preference over the other creditors of the mortgagor.

III of 1909.
V of 1920.

Priority of mortgage over claims arising under Act XIX of 1883.

98. A mortgage executed in favour of a co-operative land mortgage bank after the commencement of this Act shall have priority over any claim of the Provincial Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the execution of the mortgage.

XIX of 1883.

Power to distrain.

99. (1) If any sum due as an instalment or part of an instalment payable under a mortgage in favour of a co-operative land mortgage bank has remained unpaid for more than one month from the date on which it fell due, the bank may, in addition to any other remedy available to it, apply to the Registrar for the recovery of such sum by distraint and sale of not more than half the produce of the mortgaged land, including the standing crops thereon.

of 1940.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 101—103.)

IV of
1882.

(2) Upon receipt of such application, and notwithstanding anything contained in the Transfer of Property Act, 1882, the Registrar may, subject to the provisions of this Act and the rules, take such action as is necessary to distrain and sell such produce.

(3) No distraint shall be made under this section after the expiry of twelve months from the date on which the instalment fell due.

100. The proceeds of any distraint and sale under section 99 shall be applied as follows:—

Distribution of proceeds of sale or distraint.

First, there shall be paid to the co-operative land mortgage bank at the prescribed rate—

(a) the costs of the sale; and

(b) the other expenses incurred on account of the distraint;

Secondly, there shall be paid to the bank the amount for which the distraint was made and there shall be given to the person whose property has been sold a receipt for the amount so paid; and

Thirdly, the residue, if any, thereafter remaining shall be delivered to the person whose property has been sold.

101. Notwithstanding anything contained in any other law for the time being in force, where a power of sale without the intervention of the Court is expressly conferred on a co-operative land mortgage bank by a mortgage deed in favour of the bank, if any instalment under such mortgage is not paid in full on the date on which it falls due, the managing committee of the bank shall, in addition to any other remedy available to it, have the power, subject to the provisions of this Act and the rules, to bring the mortgaged property to sale without the intervention of the Court.

Power to bring mortgaged property to sale without the intervention of the Court.

102. The Registrar may, subject to the rules, appoint a Sale Officer for the purpose of conducting any sale under the provisions of this Chapter.

Appointment of Sale Officer.

103. A co-operative land mortgage bank in the exercise of the powers conferred by section 101, shall, in the prescribed manner and in the form of a written demand for the payment of the amount due to the bank, issue a notice upon—

Notice requiring payment from persons interested.

(a) the mortgagor;

(b) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the said property and who has previously notified the bank in writing of such interest or charge;

(c) any surety for the payment of the mortgage debt or any part thereof; and

(Chapter XI.—*Special Provisions for Co-operative Land Mortgage Banks.*—Sections 104—106.)

- (d) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

Applica-
tion for
sale and
method
of sale.

104. Upon the expiry of three months from the date of service of a notice under section 103; if the sum due under the mortgage has not been paid, the bank may, after considering any objection made within that period by any person entitled to such notice, apply to the Sale Officer appointed under section 102 to sell the mortgaged property or any part thereof and such officer shall, in the prescribed manner, proceed to sell such property by public auction and report the result thereof to the bank.

Applica-
tion to set
aside a
sale on
deposit.

105. When property mortgaged to a co-operative land mortgage bank had been sold under the provisions of this chapter, the mortgagor or any person entitled to a notice under section 103 may within the prescribed period apply to the managing committee of the bank to have the sale set aside upon his depositing with the bank—

- (a) for payment to the bank, the amount specified in the proclamation of sale together with the subsequent interest and the costs, if any, incurred by the bank in bringing the property to sale; and
- (b) for payment to the purchaser as compensation, a sum equal to five *per centum* of the purchase money.

Setting
aside
and con-
firmation
of sales.

106. (1) After the expiry of the period prescribed for making an application to have the sale set aside, the bank shall, in the prescribed manner, submit to the Registrar a report setting forth the proceedings of the Sale Officer, the result of the sale and details of any application made under section 105.

(2) Upon receipt of such report the Registrar shall—

- (a) if an application has been made under section 105 and if the amounts specified in that section have been deposited by the applicant, make an order setting aside the sale and requiring the bank to pay to the purchaser the sum deposited under clause (b) of section 105; and
- (b) if no application has been made under section 105 or an application has been made but the amount specified in that section has not been deposited by the applicant, or an application has been disallowed by the bank, make an order confirming the sale.

(3) Where an order confirming a sale is made under sub-section (2), the sale shall thereupon become absolute.

of 1904.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 107—109.)

107. (1) The Registrar shall, in making a sale absolute by an order under section 106, direct that the sale-proceeds shall be applied as follows:—

Distribution of sale-proceeds and bar to certain claims.

First, there shall be paid to the co-operative land mortgage bank, at the prescribed rate, all costs, charges and expenses properly incurred by the bank or the Sale Officer incidental to the sale or any attempted sale;

Secondly, there shall be paid to the bank all interest due on account of the mortgage in consequence whereof the mortgaged property was sold;

Thirdly, there shall be paid to the bank all sums due as principal on account of the mortgage; and

Fourthly, the residue, if any, thereafter remaining shall be paid to the mortgagor.

(2) All payments of such residue made in accordance with sub-section (1) shall be valid and effectual against any demand relating thereto made upon the bank by the mortgagor or by any other person.

108. (1) Where a sale of mortgaged property under this chapter has become absolute, the Registrar shall grant to the purchaser a certificate in the prescribed form specifying the property sold and the name of the person who, at the time of the sale, is declared to be the purchaser and such certificate shall bear the date of the day on which the sale becomes absolute.

Certificate to be issued to purchaser and to be entered by the registering officer.

XVI of 1908.

(2) Notwithstanding anything contained in the Indian Registration Act, 1908, the Registrar shall send a copy of every certificate granted under sub-section (1) to the registering officer appointed under that Act within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situated, and such registering officer shall enter the contents of such copy in his register of non-testamentary documents relating to immovable property.

VIII of 1885.

(3) The purchaser of any mortgaged property sold under this Chapter shall supply to the Registrar notices in the prescribed form for service on the landlord of such property together with such fee as may be prescribed for the service of such notices and the landlord's fee, if any, required under the Bengal Tenancy Act, 1885; and the Registrar shall thereupon, in the prescribed manner, cause such notices to be served on, and such landlord's fee to be transmitted to, the landlord named in such notices.

109. Where a certificate has been issued under section 108, the Court shall, on the application of the purchaser, order delivery of possession to be made to him in the prescribed manner.

Delivery of property to purchaser.

Explanation.—In this section “Court” means the Civil Court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situated.

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 110—114.)

Right of co-operative land mortgage bank or central co-operative land mortgage bank to purchase at a sale under this chapter.

110. It shall be competent to a co-operative land mortgage bank or central co-operative land mortgage bank to purchase the mortgaged property sold under this chapter, but the property so purchased shall be disposed of by such bank by sale within the period prescribed or, where a Trustee has been appointed, within such period as he may specify in accordance with the rules.

Title of purchaser not to be questioned.

111. When a sale has been made in exercise of a power to sell under section 101 and has been confirmed under clause (b) of sub-section (2) of section 106, the title of the purchaser shall not be questioned in any Court by the mortgagor or his successor in interest.

Power to appoint a receiver.

112. (1) In circumstances in which the power of sale under section 101 might be exercised, the Registrar may, subject to the provisions of sub-section (2), and in accordance with the rules—

- (a) on the application of a co-operative land mortgage bank, appoint a receiver of the produce and income of the mortgaged property;
- (b) on the application of the mortgagor for due cause shown, remove a receiver so appointed; and
- (c) fill up a vacancy in the office of receiver.

(2) The Registrar shall not appoint a receiver where the mortgaged property is already in the possession of a receiver appointed by a Court.

Expenses, remuneration and duties of a receiver.

113. (1) A receiver appointed under section 112 shall be entitled, in accordance with the rules, to receive such expenses of management and remuneration, if any, as may be determined by the Registrar in consultation with the co-operative land mortgage bank.

(2) The provisions of sub-section (8) of section 69A of the Transfer of Property Act, 1882, shall apply to a receiver appointed under section 112.

IV of 1882.

Powers of co-operative land mortgage bank if the mortgaged property is destroyed or the security is rendered insufficient.

114. Where any property mortgaged to a co-operative land mortgage bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, after reasonable opportunity given by the bank to provide such further security as will render the whole security sufficient to repay such portion of the loan as may be determined by the bank, has failed so to do, the whole of the loan shall be deemed to fall due at once and the bank shall, subject to the rules, be entitled to take action against the mortgagor for the recovery thereof under this chapter.

Explanation.—A security shall be deemed to be insufficient within the meaning of this section if the value of the

of 1940.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 115—118.)

mortgaged property does not exceed the amount for the time being due on the mortgage by such proportion as may be specified in the rules or by-laws.

115. (1) A Trustee and, in the case of a member society, a central co-operative land mortgage bank may, in accordance with the rules, direct a co-operative land mortgage bank to take action against a defaulter under section 99, section 101 or section 114 and, if the bank neglects or fails to do so, may take such action.

Power of the Trustee and a central co-operative land mortgage bank to direct or take certain action.

(2) Where such action is taken by a Trustee or a central co-operative land mortgage bank, the provisions of this Act and of any rules or by-laws shall apply in respect thereto as if all references to the co-operative land mortgage bank were references to the Trustee or the central co-operative land mortgage bank, as the case may be.

116. At any sale of movable or immovable property held under the provisions of this chapter no officer of a co-operative land mortgage bank or central co-operative land mortgage bank (except on behalf of the bank of which he is an officer), and no Sale Officer or other person having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

Officers of co-operative land mortgage and central co-operative land mortgage banks and Sale Officers not to bid at sales.

VIII of 1885.

117. Notwithstanding anything contained in Chapter XIV of the Bengal Tenancy Act, 1885, relating to the sale of tenures and holdings in execution of decrees for arrears of rent, no such sale held under the provisions of that chapter shall affect the title or interest of any co-operative land mortgage bank which has, in respect of such tenure or holding, a registered and notified encumbrance within the meaning of clause (b) of section 161 of the said Act, unless a concise statement of the order of attachment and proclamation of sale has, in the prescribed manner and at the time of the issue of such proclamation, been sent by the Court by registered post to such co-operative land mortgage bank.

Notice of sale under Chapter XIV of Act VIII of 1885.

Ben. Reg. VIII of 1819.

118. Notwithstanding anything contained in the Bengal Patni Taluks Regulation, 1819 (hereafter in this section referred to as the said Regulation)—

Notice of sale, and deposit for protection from sale, under Bengal Regulation VIII of 1819.

(1) when a mortgage is executed in favour of a co-operative land mortgage bank in respect of any *patni taluk* to which the said Regulation applies or any tenure or holding comprised within such *patni taluk*, the co-operative land mortgage bank shall—

(a) in such manner as may be prescribed, notify the Zemindar of the execution of such mortgage,

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Section 119.)

- (b) for the purpose of receiving notice of the sale of such *patni taluk* or tenure as the case may be, pay to the Zemindar such fee in such manner as may be prescribed, and
- (c) on compliance with the provisions of sub-clauses (a) and (b), be deemed to be a notified mortgagee in respect of such *patni taluk* or tenure;
- (2) before the sale is held of any such *patni taluk* or tenure under the said Regulation, the Zemindar shall, by registered post, send a notice thereof to every co-operative land mortgage bank which is, in respect of such *patni taluk* or tenure, a notified mortgagee within the meaning of sub-clause (c) of clause (1); and
- (3) any co-operative land mortgage bank which is a notified mortgagee within the meaning of sub-clause (c) of clause (1) shall be entitled to stay such sale by depositing with the Collector the balance of the arrears of rent due in respect of such *patni taluk* or tenure.

Notice of sale, and deposit for protection from sale under Act XI of 1859 or Act VII of 1868.

119. Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859, or the Bengal Land-revenue Sales Act, 1868 (hereafter in this section referred to respectively as the said Act of 1859 and the said Act of 1868)—

XI of 1859.
VII of 1868.

- (1) when a mortgage is executed in favour of a co-operative land mortgage bank in respect of any revenue-paying estate to which the said Act of 1859 applies or any tenure or holding comprised within such estate, or any revenue-paying tenure to which the said Act of 1868 applies or any tenure or holding comprised within such tenure, the co-operative land mortgage bank shall—
 - (a) in such manner as may be prescribed, notify the Collector of the execution of such mortgage,
 - (b) for the purpose of receiving notice of the sale of such estate or tenure as the case may be, pay to the Collector such fee in such manner as may be prescribed, and
 - (c) on compliance with the provisions of sub-clauses (a) and (b), be deemed to be a notified mortgagee in respect of such estate or tenure as the case may be;
- (2) before the sale is held of any such estate under the said Act of 1859, or of any such tenure under the said Act of 1868, the Collector shall, by registered post, send a notice thereof to every co-operative land mortgage bank which is, in respect of such estate or tenure as the case may be, a notified mortgagee within the meaning of sub-clause (c) of clause (1); and

[of 1940.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 120—122.)

- (3) any co-operative land mortgage bank which is a notified mortgagee within the meaning of sub-clause (c) of clause (1) shall be entitled to stay such sale by depositing with the Collector the balance of the arrears of land-revenue due in respect of such estate or tenure as the case may be.

XVI of
1908.

120. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for a Trustee or for any officer of a co-operative land mortgage bank or central co-operative land mortgage bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

Exemption from personal attendance for registration of certain instruments.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to the Trustee or to such officer for any information respecting the same and on being satisfied of the execution thereof shall register the instrument.

121. Notwithstanding any assignment or transfer of any mortgage by a co-operative land mortgage bank to a central co-operative land mortgage bank—

- (a) all moneys due under the mortgage shall, in the absence of any specific direction to the contrary issued by the Registrar or a Trustee in accordance with the rules and communicated to the mortgagor, be payable to the co-operative land mortgage bank and such payment shall be as valid as if the mortgage had not been so assigned or transferred; and
- (b) the co-operative land mortgage bank shall, in the absence of any such direction communicated to it, be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

Power of co-operative land mortgage bank to receive moneys, etc., notwithstanding assignment or transfer of mortgage deeds to a central co-operative land mortgage bank.

122. (1) Where a mortgage executed in favour of a co-operative land mortgage bank, whether before or after the commencement of this Act, is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof whether major or minor, the burden of proof shall, notwithstanding anything contained in any other law for the time being in force, rest upon the party which calls such mortgage in question.

Mortgages executed by members of Hindu joint families.

(2) For the purpose of this section the following shall be regarded as purposes binding on the members of a joint Hindu family:—

- (a) the improvement of agricultural land or of the methods of cultivation, and
- (b) the purchase of land.

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Sections 123—127.)

CHAPTER XII.

ENFORCEMENT OF OBLIGATIONS AND RECOVERY
OF SUMS DUE.

Access to
documents,
etc.

123. The Registrar and, subject to any restrictions prescribed, an audit officer, arbitrator or any person conducting an inspection or inquiry under Chapter VIII, shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of a co-operative society.

Power to
enforce
attend-
ance of
witness
and
produc-
tion of do-
cuments.

124. The Registrar and, subject to any restrictions prescribed, an audit officer, arbitrator or liquidator, or any person conducting an inspection or inquiry under Chapter VIII, shall, in so far as is necessary for carrying out any of the purposes of this Act, have power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books, accounts, documents, securities, cash and other properties by the same means and, so far as may be, in the same manner as provided in the Code of Civil Procedure, 1908.

Act V of
1908.

Power to
direct con-
ditional
attach-
ment.

app. Page 162—

be

In sub-section (1) of section 125, for the words "may, unless such security is furnished as he may require, direct the conditional attachment of the said property or such part thereof as he thinks fit" substitute the following, namely:—

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"may, by an order in writing, direct such person or co-operative society, within a time to be fixed by him, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Registrar, when required, the said property or the value of the same, or such portion thereof as may be considered sufficient by the Registrar, or to show cause why he or it should not furnish such security. The Registrar may also in the order direct the conditional attachment of the said property or such portion thereof as he thinks fit."

3.)

Power to
direct
payment
of dues.

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(Substituted by West Ben. Act VII of 1953, sect

[No. 50, dated the 26th May, 1953.]

the

Charge
and sur-
charge.

127. (1) Where, as the result of an audit under section 76 or an inspection under section 82 or section 83, or an inquiry under section 84 or a report made in the course of the winding up of a co-operative society, it appears to the Registrar that any past or present officer, has at any

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of 1940.]

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Section 128.)

time after the commencement of this Act and within a period of four years prior to the date of such audit, inspection, inquiry or report, as the case may be—

- (a) intentionally made or authorized any payment which is contrary to the provisions of this Act or to the rules or by-laws; or
- (b) by reason of his culpable negligence in respect of any prescribed matter involved the society in any loss or deficiency; or
- (c) failed to bring into account any sum which ought to have been brought into account; or
- (d) misappropriated or fraudulently retained any property of the society;

the Registrar may inquire into the conduct of such officer.

(2) Upon such inquiry, after giving such officer an opportunity to be heard and, in the case of a payment made contrary to the provisions of this Act or the rules or by-laws, after affording such officer an opportunity to recover the amount of such payment from the payee and credit it to the funds of the society, the Registrar may, subject to the rules, by an order in writing require such officer to pay such sum to the assets of the society by way of compensation in respect of such payment or loss or sum, or to restore such property as the Registrar thinks fit, and to pay such sum as the Registrar may fix to meet the cost of the proceedings under this section.

(3) This section shall apply notwithstanding that such officer may by his act or omission have incurred criminal liability under this Act or any other law for the time being in force.

128. Where it appears to the Registrar that any person has contravened the provisions of this Act, the rules or by-laws—

Penalty
for certain
misde-
meanours.

- (a) by sitting or voting as a member of a managing committee, or voting in the affairs of a co-operative society as a representative of another society which is a member of such society, or exercising the rights of a member of a co-operative society, when such person was not entitled so to sit or vote or exercise such rights, as the case may be, or
- (b) by employing a loan for a purpose different from that for which it was granted,

the Registrar may, subject to the rules and after affording such person an opportunity to be heard, by an order in writing direct him to pay to the assets of the society by way of penalty such sum as the Registrar thinks fit in respect of every such contravention.

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Sections 129—131.)

Regis-
trar's
power to
enforce
perform-
ance of
obli-
gations.

129. Notwithstanding anything contained in this Act, where any co-operative society is required to take any action under this Act, the rules or the by-laws and such action is not taken—

- (a) within the time provided in this Act, the rules or the by-laws; or
- (b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by a notice in writing,

the Registrar may call upon any officer of the society whom, in accordance with such principles as may be prescribed, he considers to be responsible for the carrying out of his directions and, after giving such officer an opportunity to be heard, may require him to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.

Recovery
of sums
due.

130. Any sum payable to the Provincial Government or to a co-operative society or the authority constituted under section 81 in accordance with any order, decision or award under this Act shall be recoverable in the manner provided in the Third Schedule:

Provided that, notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, any sum payable in accordance with an award made under section 126 in respect of default in the payment of a loan taken under section 51 or of any instalment of such loan, shall be recoverable—

**Act V of
1908.**

- (a) if the salary of the member exceeds thirty rupees *per mensem*, by the attachment of such salary to the extent of the instalment in respect of which default has been made or of half the difference between such salary and thirty rupees, whichever is less, and
- (b) if the salary of the member does not exceed thirty rupees *per mensem*, by the attachment of such salary to the extent of the instalment in respect of which default has been made or of one anna in every rupee of such salary, whichever is less.

Acts of
societies,
etc., not
to be
invalid-
ated by
certain
defects.

131. (1) No act of a co-operative society or managing committee or of any officer or liquidator done in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some defect subsequently discovered in the organisation of the society or in the constitution of the managing committee or in the appointment or election of the officer or liquidator or on the ground that such officer or liquidator was disqualified for his appointment.

of 1940.]

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Chapter XIII.—Jurisdiction, Appeal and Revision.—Sections 132—134.)

(2) No act done in good faith by any person appointed under this Act shall be invalid merely by reason of the fact that his appointment has been cancelled by or in consequence of any order subsequently passed under this Act.

(3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of a society.

CHAPTER XIII.

JURISDICTION, APPEAL AND REVISION.

132. No suit, prosecution or legal proceedings whatever shall lie against the Registrar or any person subordinate to him or acting on his authority or against a Trustee in respect of anything in good faith done or purporting to be done under this Act. Indemnity.

133. (1) Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of— Bar to jurisdiction of Courts.

- (a) the registration of a co-operative society or its by-laws or of an amendment of its by-laws; or
- (b) the dissolution of a managing committee and the management of the society on dissolution thereof; or
- (c) any dispute required under section 86 to be referred to the Registrar; or
- (d) any matter concerned with the winding up and dissolution of a co-operative society.

(2) While a co-operative society is being wound up no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award under this Act shall be liable to be challenged, set aside, modified, revised or declared void in any Court on any ground whatsoever except want of jurisdiction.

134. (1) An appeal shall lie from an order shown in column 2 of the Fourth Schedule to the authority shown in column 3 and within the period shown in column 4 thereof. Appeal.

(2) Save as provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act, and every such order, decision or award shall be final.

(Chapter XIII.—Jurisdiction, Appeal and Revision.—
Chapter XIV.—Offences, Penalties and Procedure.—
Sections 135—139.)

Review

135. (1) The Provincial Government may call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of the Registrar or any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.

(2) The Registrar may at any time—

- (a) revise any order passed by himself; or
- (b) call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of any person subordinate to him or acting on his authority, and if it appears to him that any decision, order or award or any proceedings so called for should for any reason be modified, annulled or reversed, may pass such orders thereon as he thinks fit:

Provided that, before any order is made under clause (a) or clause (b), the Registrar shall afford to any person, likely to be affected adversely by such order, an opportunity of being heard.

CHAPTER XIV.

OFFENCES, PENALTIES AND PROCEDURE.

Offences and penalties.

136. Any person mentioned in column 3 of the Fifth Schedule who is guilty of an offence shown in column 2 thereof shall, notwithstanding anything contained in this Act or any other law for the time being in force, be liable on conviction to the penalty shown in column 4 thereof.

Cognisance of offences.

137. (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) For the purposes of the Code of Criminal Procedure, Act V of 1898, every offence under this Act shall be deemed to be non-cognisable. 1898.

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar.

Presumption raised by entry in register of members, etc.

138. Any register of members or shares kept by a co-operative society in the prescribed manner shall be *prima facie* evidence of any of the following particulars entered therein—

- (a) the date on which the name of any person was entered in such register or list as a member; and
- (b) the date on which any such person ceased to be a member.

Proof of entries in societies' books.

139. (1) A copy of any entry in a book of a co-operative society, regularly kept in the course of business and in the prescribed manner, shall, if certified in the prescribed manner, be received in any suit or legal proceeding as *prima facie* evidence of the existence of such entry,

of 1940.]

(Chapter XIV.—*Offences, Penalties and Procedure.*—
Chapter XV.—*Rules.*—Section 140.)

and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) No officer or liquidator of a co-operative society and no officer in whose office the books of a co-operative society are deposited after the society has been wound up shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books the contents of which can be proved under subsection (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless specially so directed by an order of the Court or the arbitrator.

CHAPTER XV.

RULES.

140. (1) The Provincial Government may, for the whole or any part of Bengal, and for any co-operative society or class of co-operative societies, after previous publication, make rules to carry out the purposes of this Act.

Power to
make rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

- (i) the sums which, in addition to those referred to in clause (o) of section 2, shall be deducted from profits;
- (ii) the period which shall be a co-operative year;
- (iii) the exemption of any society or class of societies from, and the extent of application to, any society or class of societies of, any of the provisions of this Act;
- (iv) the extent and manner of delegation of powers¹ [and duties] entrusted to the Registrar;
- (v) the conditions for registration of any co-operative society or class of societies;
- (vi) the forms to be used and the conditions to be complied with in the making of an application for the registration of a co-operative society and the procedure in the matter of such application;
- (vii) the procedure and conditions for the division of a co-operative society and amalgamation of co-operative societies;
- (viii) the extent to which a co-operative society may limit the number of its members;

¹Inserted by the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

(Chapter XV.—Rules.—Section 140.)

- (ix) the matters in respect of which a co-operative society shall or may make by-laws, and the procedure and conditions for amending the by-laws;
- (x) the procedure and conditions for the exercise by the financing bank of the powers conferred by section 18;
- (xi) the procedure for calling and holding general meetings, and the powers to be exercised by such meetings;
- (xii) the circumstances in which delegates may be elected for the purposes of section 20, the manner of electing delegates for any of the purposes of this Act and the manner in which delegates so elected shall vote;
- (xiii) the date for the closing of the annual accounts of a co-operative society;
- (xiv) the method of constituting the managing committee of a co-operative society (including the appointment of persons to represent appropriate interests);
- (xv) the qualifications, disqualification, term of office, suspension and removal of members of managing committees and officers of different classes of co-operative societies;
- (xvi) the procedure at meetings of the managing committee and the powers to be exercised and the duties to be performed by the managing committee and officers of a society;
- (xvii) the conditions of deputation of, and the powers to be exercised and duties to be performed by, a servant of the Crown deputed under section 24;
- (xviii) the procedure and conditions for the suspension or supersession of the managing committee of a co-operative society and the method of appointment and qualifications of a person appointed under section 26;
- (xix) the procedure for registering the address of a co-operative society and any change of its address;
- (xx) the minimum number of paid staff to be employed by different classes of co-operative societies and the qualifications thereof;
- (xxi) the accounts, books and registers to be kept and the returns to be submitted by a co-operative society, the form in which and the persons by whom such accounts, books and registers shall be kept and such returns submitted, the method in which such accounts, books and registers shall be kept in custody and destroyed and the charges which may be assessed and levied for the preparation of any return not submitted in accordance with the rules;

(Chapter XV.—Rules.—Section 140.)

- (xxii) the documents to be kept open to inspection by a co-operative society under section 30;
- (xxiii) the manner in which the balance sheet shall be published under section 31;
- (xxiv) the conditions and terms under which, the manner in which and the extent to which funds may be raised by a co-operative society by means of shares, deposits, debentures or otherwise, and the manner in which provision shall be made for the maintenance of fluid resource;
- (xxv) the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of debentures, issued by a co-operative society;
- (xxvi) the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures under section 33;
- (xxvii) the procedure and conditions for varying an instrument of trust between the Trustee and a co-operative society;
- (xxviii) the procedure whereby, and the conditions under which, guarantees or financial assistance may be given under section 33 or section 38;
- (xxix) the payments to be made and the conditions to be complied with by members applying for loans from a co-operative society, the period for which loans may be made and the amount which may be lent to an individual member;
- (xxx) the conditions in which and the extent to which loans may be made in relaxation of the provisions of sub-section (1) of section 39 and the determination by a society of the maxima and normal credits of its members;
- (xxxi) the manner in which co-operative societies may be given an opportunity of being heard under sub-section (2) of section 39;
- (xxxii) the prohibitions and restrictions subject to which co-operative societies may transact business with persons who are not members;
- (xxxiii) the procedure and conditions for change of the form of liability of a co-operative society under section 43;
- (xxxiv) in any case in which a notice or process is issued under this Act or the rules—
 - (a) the form of the notice or process;
 - (b) the period of notice to be given;
 - (c) the persons on or against whom the notice or process shall be issued; and
 - (d) the conditions to be fulfilled in order to establish proof of the service of such notice or process;

(Chapter XV.—Rules.—Section 140.)

- (xxv) the form of the written statement of claim required by section 44;
- (xxvi) the form of application under, the form of map and statement and the manner of their publication required by, and the manner of levying water rate and embankment protection rate provided in, sections 48 and 49;
- (xxvii) the conditions in which any charge in favour of a co-operative society shall be satisfied and the extent to which and the order in which the property subject to the charge shall be used in its satisfaction;
- (xxviii) the form of and procedure for an application under section 54 and the procedure for calling, holding and conducting a meeting under that section;
- (xxix) the manner in which a co-operative society may invest or deposit its funds under section 55;
- (xl) the proportion which shall be annually carried under section 56 to the reserve fund from the net profits of a co-operative society, the extent to which a society may use its reserve fund in its business and the method in which the reserve fund shall be invested;
- (xli) the conditions in which, and the extent to which, the profits of a co-operative society may be distributed among its members under section 57;
- (xlii) the co-operative purposes for which a co-operative society shall under section 58 contribute a percentage of its net profits, the extent of the contribution which may be made under clause (b) of that section and the manner of making such contributions;
- (xliii) the amount or proportion of contribution which a co-operative society may make to a provident fund under section 59;
- (xliv) the conditions in which a member of a co-operative society shall be disqualified from voting under sub-section (2) of section 60;
- (xlv) the conditions to be complied with by a person applying for admission or admitted as a member of a co-operative society, the procedure for the admission, expulsion and resignation of members and the conditions for the exercise by members of the rights of membership;
- (xlvi) the manner of recalling a loan under section 63;
- (xlvii) the maximum portion of the share capital of a co-operative society which may be held by a member under section 67;
- (xlviii) the conditions for the maximum holding of a member under section 68;

of 1940.]

(Chapter XV.—Rules.—Section 140.)

- (xlix) the procedure and conditions for, and the method of, nomination by a member of a transferee under section 69;
- (l) the procedure and conditions for the substitution by a society under sub-section (1) of section 70 of another person for the nominee of a deceased member and for the decision by the society to proceed under sub-section (2) of that section, and the procedure for calculating the value of the share or interest of a member or the sums due to him for the purposes of sections 70 to 74 inclusive;
- (li) the manner of determining the value of land for the purposes of clause (3) of section 72;
- (lii) the circumstances and manner in which a member may resign or be expelled from a co-operative society;
- (liii) the procedure by which a co-operative society shall calculate and write off bad debts;
- (liv) the date by which the annual audit shall be made and an audit report submitted, the procedure of an audit officer conducting an audit, the matters on which he shall submit a report, the form in which the statement of accounts shall be prepared for his audit, the limits within which he may examine the monetary transactions of the society, the form of his audit report and statement of accounts audited and the charges, if any, to be paid by a co-operative society for audit;
- (lv) the manner in which appointments shall be made and control exercised by, and the number of persons comprising, and the other functions to be performed by the authority constituted under section 81, the manner of election and nomination of such persons, the fee to be paid to such authority and the manner of such payment;
- (lvi) the conditions to be fulfilled and the qualifications to be possessed by a member of the paid staff of a financing bank certified by the Registrar under sub-section (2) of section 82;
- (lvii) the qualifications of and method of appointing an arbitrator, the procedure to be followed in proceedings under Chapter IX and the method of calculating charges incidental to such proceedings and of enforcing decisions therein;
- (lviii) the cases in which and the conditions under which it shall be obligatory upon the Registrar to order the winding up of a co-operative society;

(Chapter XV.—Rules.—Section 140.)

- (lix) the procedure for the appointment and removal of, and for the payment of a remuneration to, a liquidator, the condition of such appointment, the conditions in which the Registrar shall exercise control of a liquidator and direct him to exercise his powers under section 91, and the procedure to be followed in proceedings under Chapter X;
- (lax) the manner in which the surplus assets of a society which has been wound up shall be disposed of and its records shall be deposited;
- (lxi) the manner of effecting distraint and the procedure for the custody, preservation and sale of the property distrained (including such as is perishable), the investigation of claims of persons other than the defaulter to any right or interest in the distrained property and the postponement of sale pending such investigation;
- (lxii) the qualifications and method of appointment of a Sale Officer under section 102 and the powers and functions which such a Sale Officer may exercise;
- (lxiii) in the case of a sale of immovable property under Chapter XI—
 - (a) the procedure for proclamation and conduct of the sale and the conditions in which an attempted sale may be abandoned;
 - (b) the method of calculating the expenses incidental to the sale or attempted sale;
 - (c) the procedure for the receipt, deposit and disposal of the proceeds of sale;
 - (d) the procedure for a resale if an attempted sale is abandoned or the purchase money is not deposited within the prescribed time, and the penalty to be levied against a purchaser who fails so to deposit the purchase money;
 - (e) the period within which an application to set aside a sale under section 105 shall be made;
 - (f) the procedure for the payment to the purchaser of the purchase money and compensation deposited under section 105;
 - (g) the form and method of submission of a report by a co-operative land mortgage bank under sub-section (1) of section 106;
 - (h) the form of sale certificate under section 108, the form of the notices to be supplied under sub-section (3) of that section, the fee payable for the service of such notices, and the manner of serving such notices on, and of transmitting landlord's fee to, the landlord named in such notices; and

of 1940.]

(Chapter XV.—Rules.—Section 140.)

- (2) the procedure for the delivery by the Court of the property purchased to the purchaser under section 109;
- (lxiv) the time within which and the procedure according to which property purchased by a co-operative land mortgage bank at a sale of immovable property under Chapter XI shall be disposed of by the bank;
- (lxv) in respect of a receiver appointed under section 112, the conditions in which he may be appointed or removed, the powers and functions which he may exercise and his procedure in the exercise thereof and the expenses of management and the remuneration which he may receive;
- (lxvi) the circumstances in which action may be taken by the bank against the mortgagor under section 114 and the proportion referred to in the explanation to that section;
- (lxvii) the procedure and conditions for the exercise of the powers conferred by section 115, and for the imposition of restrictions by the Trustee or the Registrar upon a co-operative land mortgage bank under section 121;
- (lxviii) the fee payable under sections 118 and 119;
- (lxix) the procedure and conditions for the exercise of the powers conferred by sections 123 and 124;
- (lxx) the procedure for the conditional attachment of property under section 125;
- (lxxi) the persons who may make awards under section 126;
- (lxxii) the procedure and principles for the conduct of an inquiry under section 127 and the matters referred to in clause (b) of sub-section (1) thereof;
- (lxxiii) the exercise of the powers conferred by section 128;
- (lxxiv) the procedure and principles for the exercise of the powers conferred by section 129;
- (lxxv) in the case of appeals lying to the Provincial Government, the authority to which the power of hearing appeals may be delegated;
- (lxxvi) the method of certification of any document under section 139, the procedure and conditions for obtaining copies of documents and the charges to be levied for the supply of certified or uncertified copies;
- (lxxvii) the procedure and conditions for inspecting documents in the office of the Registrar and the charges, if any, to be levied for such inspection;

(Chapter XV.—Rules.—First Schedule.—Enactment Repealed.—Second Schedule.—Powers exclusively exercisable by the Registrar.)

(lxxviii) the procedure for and method of calculating any costs, charges or expenses required to be levied under this Act or the rules;

(lxxix) the procedure for and method of recovery of any sums due under this Act or the rules;

(lxxx) the method of communicating or publishing any order, decision or award required to be communicated or published under this Act or the rules.

(3) In making any rule under this Act the Provincial Government may direct that any person committing a breach thereof shall on conviction by a Court be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues subsequent to such conviction.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

[Repealed by the *Bengal Repealing and Amending Act, 1946* (Ben. Act XVI of 1946).]

SECOND SCHEDULE.

POWERS EXCLUSIVELY EXERCISABLE BY THE REGISTRAR.

(See section 10.)

Serial. 1	Section. 2	Powers. 3
1	18 ..	To register an amendment of a by-law of a co-operative society which is a member of a financing bank, if the financing bank considers such amendment to be necessary or desirable and if the society has failed to make the amendment when called upon by the bank to do so.
2	43(I) ..	To approve a change in the form of liability of a co-operative society.
3	56(4)(c) ..	To approve the bank, other than a Government Savings Bank in which the reserve fund of a co-operative society may be invested or deposited.
4	127(2) ..	To require of any person who has taken part in the organization or management of a co-operative society or any past or present officer of such society, to contribute to the assets of the society any sum by way of compensation for any payment made, loss incurred or sum not accounted for in consequence of the action of such person or officer, or to restore any property misappropriated or fraudulently retained by such person or officer, and to require such person or officer to pay any sum to meet the costs of proceedings under this section.
5	128 ..	To impose penalties for certain contraventions of the provisions of this Act, the rules or by-laws.
6	129 ..	To enforce performance of certain obligations by a co-operative society, and to require the officer of the society whom the Registrar considers to be responsible for the default to pay a certain sum to the assets of the society.
7	133(2) ..	To give leave and impose terms for the institution of a suit or other legal proceeding against a liquidator, a co-operative society or any member thereof while such society is being wound up.
8	137(3) ..	To sanction the institution of any prosecution under this Act.

(Third and Fourth Schedules.)

THIRD SCHEDULE.

RECOVERY OF SUMS DUE.

(See section 130.)

Serial. 1	Nature of sum due. 2	Method of recovery. 3
	Expenses incurred in writing up the accounts of a society under section 77; and sums awarded under section 129.	By the Collector as a public demand upon requisition by the Registrar or, in the case of section 77, with his approval by the audit officer.
	Cost of an inquiry or inspection apportioned under section 85; recovery of dues awarded under section 126; contributions by way of compensation awarded under section 127; and sums awarded under section 128.	By the Collector as a public demand upon requisition by the Registrar.
	Sums awarded to a co-operative society by any order made under section 87 or by an award having the effect of a final mortgage decree under section 88.	By the Collector as a public demand upon requisition by the society. <i>Or:</i> By any Civil Court having local jurisdiction, in the same manner as a decree of such court, upon application by the society.
	Sums assessed by a liquidator as contributions under section 91.	By the Collector, as a public demand upon requisition by the Registrar or by the liquidator.
	Sums due under any rule made under this Act.	In the manner prescribed.

FOURTH SCHEDULE.

APPEALS.

(See section 134.)

Serial.	Order appealable.	By whom the appeal may be preferred; and authority to which appeal lies. 3	Period of limitation.
	An order refusing to register a co-operative society under section 15 or an amendment of a by-law under section 17.	By any member of the society; (a) if passed by the Registrar; to the Provincial Government; or (b) if passed by any other person; to the Registrar.	Two months from the date on which the order is communicated to the society.
	An order refusing to register an amendment under section 18.	By the financing bank; to the Provincial Government.	Two months from the date on which the order is communicated to the financing bank.
	An order of disqualification under section 25 or an order under section 26 dissolving a managing committee and appointing a person to manage the affairs of a society.	By any member of the managing committee; (a) if passed by the Registrar; to the Provincial Government; or (b) if passed by any other person to the Registrar.	Two months from the date on which the order is communicated to the society.

(Fourth and Fifth Schedules.)

Serial.	Order appealable.	By whom the appeal may be preferred; and authority to which appeal lies.	Period of limitation.
1	2	3	4
4	An entry in or omission from the map or the statement of irrigable area prepared under section 48 or of protected area prepared under section 49.	By any person aggrieved; to the Collector.	One month from the date of publication of the statement.
5	Assessment of water rate under section 48 or of embankment protection rate under section 49.	By any person aggrieved; to the Registrar.	One month from the date of assessment.
6	An order under section 85 apportioning costs.	By any person aggrieved; to the District Judge.	One month from the date on which the order was communicated to the person aggrieved.
7	Any order, decision or award of the Registrar or an arbitrator under section 87 or 88.	By any person aggrieved; (a) if passed by the Registrar; to the Provincial Government; or (b) if passed by any other person; to the Registrar.	One month from the date on which the order, decision or award was communicated to the person aggrieved.
8	An order passed under section 89 for the winding up of a society.	By any member of the society; (a) if passed by the Registrar; to the Provincial Government; or (b) if passed by any other person; to the Registrar.	Two months from the date on which the order was communicated to the society.
9	Any order, decision or award of a liquidator under section 91.	By any person aggrieved; to the Registrar.	Two months from the date on which the order, decision or award was communicated to the person aggrieved.
10	An order passed under section 127 or section 129.	By any person aggrieved; to the District Judge.	Three months from the date on which the order was communicated to the person aggrieved.
11	Any order or decision declared by rules under this Act to be appealable.	By the person declared by the rules to be competent to appeal to the prescribed authority.	The period prescribed.

FIFTH SCHEDULE.**OFFENCES AND PENALTIES.***(See section 136.)*

Serial.	Offences.	Person liable.	Penalty.
1	2	3	4
1	Unauthorised use of the word "co-operative" in any name or title under which business is carried on in contravention of section 7.	The company, society or person carrying on business under a name or title in which the word is thus used.	Fine which may extend to fifty rupees; and in the case of a continuing offence a further fine of five rupees for each day on which the offence is continued after conviction therefor.

(Fifth Schedule.)

Serial. 1	Offences. 2	Person liable. 3	Penalty. 4
2	Wilful neglect or refusal by any person to do any act, make any return or furnish any information required to be done, made or furnished under this Act or the rules.	The person neglecting or refusing to do the act, make the return or furnish the information.	Fine which may extend to fifty rupees; and in the case of a continuing offence a further fine of five rupees for each day on which the offence is continued after conviction therefor.
3	Wilfully making a false return or furnishing false information required to be made or furnished under this Act or the rules.	The person wilfully making the false return or furnishing the false information.	Fine which may extend to one hundred rupees.
4	Removing or otherwise disposing of or suffering to be removed or otherwise disposed of any property on which a co-operative society holds a first charge under section 47 with intent to defraud the society or with such intent doing any other act to the prejudice of the society's first charge.	The person by whom or on whose behalf the property is removed or disposed of or the act done.	Fine which may extend to two hundred rupees.
5	Any act or omission declared by the rules to be an offence.	The person rendered liable by the rules.	The penalty provided in the rules.

Bengal Act I of 1941¹

THE OFFICIAL TRUSTEES (BENGAL AMENDMENT) ACT, 1941.

[20th March, 1941.]

An Act further to amend the Official Trustees Act, 1913, in its application to Bengal.

II of 1913. WHEREAS it is expedient further to amend the Official Trustees Act, 1913, in its application to Bengal, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Official Trustees Bengal Amendment) Act, 1941. Short title.

2. The Official Trustees Act, 1913, shall, in its application to ²[West Bengal], be amended in the manner hereinafter provided. Application of Act.

3. After section 14 of the Official Trustees Act, 1913 (hereinafter referred to as the said Act), the following section shall be inserted, namely:— Insertion of new section 14A in Act II of 1913.

“14A. The Official Trustee for ²[West Bengal], may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorised to administer) any person who is willing to be examined by him regarding such question”.

4. After section 30 of the said Act, the following section shall be inserted, namely:— Insertion of new section 30A.

“30A. Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding”.

¹For Statement of Objects and Reasons see the *Calcutta Gazette*, dated the 7th November, 1940; for the proceedings of the Assembly see the proceedings of the meeting of the Bengal Legislative Assembly, held on the 3rd December, 1940; for proceedings of the Council see the proceedings of the meetings of the Bengal Legislative Council, held on the 9th December, 1940 and 11th January, 1941.

²See footnote 2 on page 1, ante.

Bengal Act V of 1941¹

THE BENGAL MOTOR SPIRIT SALES TAXATION ACT, 1941.

[12th June, 1941.]

An Act to provide for the levy of a tax on retail sales of motor spirits in Bengal.

WHEREAS it is expedient to further the construction of new roads in Bengal, and therefore to provide for the levy of a tax on retail sales of motor spirit in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Motor Spirit Sales Taxation Act, 1941.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of ²[West Bengal.]

(3) It shall come into force on such date³ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

- (a) “motor spirit” means any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for any form of motor vehicle or stationary internal combustion engine, and which has a flashing point below 76 degrees Fahrenheit;
- (b) “prescribed” means prescribed by rules made under this Act;
- (c) “retail dealer” means any person who sells or keeps for sale motor spirit for the purpose of consumption by the purchaser;
- (d) “retail sale” means a sale of motor spirit by a retail dealer for the purpose of consumption by the purchaser;
- (e) “wholesale dealer” means any person who sells motor spirit, or keeps motor spirit for sale, to retail dealers in such spirit, for the purpose of re-sale or for consumption by such dealers.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 7th November, 1940; the Report of the Select Committee was presented to the Assembly on the 3rd February, 1941; for the proceedings of the Assembly see the proceedings of the meetings of the Bengal Legislative Assembly, held on the 28th November, 1940 and 3rd and 4th February and 3rd April, 1941; for proceedings of the Council see the proceedings of the meetings of the Bengal Legislative Council, held on the 14th February, 4th, 10th and 11th March, 1941.

²See footnote 2 on page 1, *ante*.

³The Act came into force on the 7th day of August, 1941, vide Notification No. 1911F., dated the 4th August, 1941, published in the *Calcutta Gazette*, dated the 7th August, 1941, Part I, page 1902.

(Sections 3, 4.)

Explanation.—A sale of motor spirit by a co-operative society or a club or a firm or any association to one of its members for consumption is a retail sale within the meaning of clause (d).

Levy of
tax.

3. (1) Except as otherwise expressly provided in this Act, there shall be charged and levied on all retail sales of motor spirit effected after the ¹[date² of commencement of the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1946, a tax at the rate of six annas] per gallon; and such tax shall be payable to the Provincial Government by the retail dealer:

Provided that the tax payable in respect of motor spirit sold to a retail dealer and used by such dealer for his own consumption shall be paid by such dealer.

(2) Where any retail dealers obtain their supplies of motor spirit from a wholesale dealer, the Provincial Government may by agreement with the wholesale dealer, levy from him in advance the tax which may be payable by the retail dealers under sub-section (1) on the sale or consumption by them of the motor spirit, and the provisions of this Act relating to the assessment and recovery of tax shall, subject to such conditions as may be agreed upon, apply to the wholesale dealer accordingly.

(3) No tax shall be levied under this Act on the sale of any motor spirit in respect of which such tax has already been paid.

(4) No tax shall be levied under this Act on the sale of any motor spirit for the purpose of aviation.

³(5) No tax shall be levied under this Act on the sale of any motor spirit to Diplomatic and Consular Officers of such countries as may be specified in this behalf by the Provincial Government by notification in the *Official Gazette*.

No dealer
to carry
on business
without
a licence.

4. (1) No person shall, after the commencement of this Act, carry on business in motor spirit as a wholesale or retail dealer at any place except under a licence granted under this Act and in conformity with the conditions of such licence:

Provided that persons carrying on such business at the commencement of this Act shall be allowed two months from such commencement to obtain such licence.

(2) Where a retail dealer has more than one place of business, whether in the same district, village or town or in different districts, villages or towns, he shall obtain a separate licence in respect of each such place of business.

¹Substituted by the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1946 (Ben. Act XIII of 1946), for the words "date of commencement of the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1945, a tax at the rate of three annas".

²The Bengal Motor Spirit Sales Taxation (Amendment) Act, 1946 (Ben. Act XIII of 1946), came into force on the 1st November 1946 *vide* Notification No. 10549 dated the 12th October, 1946, published in the *Calcutta Gazette*, Extraordinary of the 14th October, 1946.

³Added by the Bengal Motor Spirit Sales Taxation (West Bengal Amendment) Act, 1948 (West Bengal Act XXVII of 1948).

of 1941.]

(Sections 5, 6.)

(3) No wholesale dealer shall, except under a licence granted under this Act for carrying on business in motor spirit as a retail dealer, sell motor spirit for consumption or sale in '[West Bengal]' to any person other than a wholesale or retail dealer, possessing a licence under this Act.

(4) Application for licence under this Act for carrying on business in motor spirit as a wholesale or retail dealer shall be made in such form and to such authority as may be prescribed.

(5) If the authority referred to in sub-section (4) is satisfied that an application for a licence is in order he shall issue the licence to the applicant and every such licence shall be in the prescribed form and contain the prescribed particulars and shall be subject to the prescribed conditions.

(6) Subject to such conditions as may be prescribed, a licence granted under this section may be suspended or cancelled by the authority which granted it—

(a) if there is any contravention of any of the provisions of this Act or any breach of the conditions subject to which the licence was granted, or

(b) if the holder of the licence has ceased to carry on the business or has sold or otherwise transferred his interest in the business in respect of which the licence was granted.

(7) The holder of a licence shall not be entitled to any compensation for any loss or damage if suffered by him as a result of suspension or cancellation of his licence under sub-section (6).

5. Every retail dealer shall in respect of his business at each place where he carries on business—

(a) keep books of account in the prescribed form; and

(b) submit every month to such authority as may be prescribed a correct return in the prescribed form and by the prescribed date showing—

(i) the quantity of motor spirit received by him during the preceding month;

(ii) the quantity sold by him during such month;

(iii) the quantity consumed by him out of his own stock of motor spirit during such month; and

(iv) such other particulars as may be prescribed.

Retail dealers to keep books of account and submit returns.

6. Before submitting the return referred to in clause (b) of section 5 in each month, the retail dealer shall pay into a Government treasury or the Reserve Bank of India, the full amount of the tax due under this Act in respect of the motor spirit sold by him in retail or consumed by him out of his own stock during the preceding month according to such return, and furnish along with the return a receipt from such treasury or Bank showing payment of such amount.

Payment of the tax and receipt for such payment.

(Sections 7—10.)

Determi-
nation
of the
amount of
tax by
the pre-
scribed
authority
in certain

7. (1) If no return is submitted by a retail dealer under clause (b) of section 5 in respect of any month by the prescribed date in that behalf, or if the return is submitted without a receipt showing payment of the full amount of the tax due as required by section 6 or if the return submitted appears to the authority referred to in clause (b) of section 5 to be incorrect or incomplete, such

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Page 184—

In sub-section (1) of section 7, for the words "after demand is made therefor" substitute the words "from the date of service in the prescribed manner of notice of demand therefor to be issued by the authority".

(Substituted by West Ben. Act XIV of 1954, section 2.)

[No. 53, dated the 11th June, 1954.]

any, submitted by him, and for this purpose he shall be allowed a period of not less than seven days.

(2) If the amount of the tax due is not paid within the period mentioned in sub-section (1), the authority referred to in clause (b) of section 5 may direct that the retail dealer shall pay in addition to the amount of the tax so unpaid a sum not exceeding that amount by way of penalty.

(3) If default is made in making payment of the amount of tax due within the period mentioned in sub-section (1) or in making payment of any penalty referred to in sub-section (2), it shall be recoverable from the person from whom it is due as an arrear of land-revenue.

Refunds.

8. The authority referred to in clause (b) of section 5 shall, in the prescribed manner, refund to a retail dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act, either by cash payment or, at the option of the dealer, by deduction of such excess from the amount of tax due in respect of any subsequent return.

Wholesale
dealer to
keep books
of account
and submit
returns.

9. Every wholesale dealer shall submit every quarter to such authority as may be prescribed, a correct return in the prescribed form and by the prescribed date showing—

(i) the quantities of motor spirit supplied by him during the preceding quarter to retail dealers in [West Bengal], specifying the name and address of each retail dealer, the quantity supplied to him, and the dates on which the supplies were made; and

(ii) such other particulars as may be prescribed.

Transfer of
business.

10. (1) No person carrying on business in motor spirit as a wholesale or retail dealer shall sell or otherwise dispose of such business or any part thereof except to a person possessing an appropriate licence under this Act to carry on such business.

(Sections 11, 12.)

(2) If any person carrying on any such business sells or otherwise disposes of such business or any part thereof, he shall within fourteen days inform the prescribed authority accordingly; and if any such person dies, his legal representative shall in like manner inform the said authority.

(3) If any person carrying on any such business dies, his legal representative shall either—

- (a) apply within thirty days for an appropriate licence under this Act to carry on the business; or
- (b) sell or otherwise dispose of the business within thirty days to a person possessing an appropriate licence under this Act to carry on the business; or
- (c) dispose of the stocks of motor spirit, in respect of the sale of which tax under this Act has not been paid, under the directions of the authority referred to in sub-section (2).

(4) When the ownership of the business in motor spirit or any part thereof of a retail dealer is transferred, any tax payable under this Act in respect of sales of such business or part thereof, by such retail dealer which remains unpaid at the time of the transfer shall be payable by the transferee.

11. (1) Any person empowered by the Provincial Government in this behalf may, for the purposes of this Act,—

Powers of inspection, entry and search.

- (a) require any wholesale or retail dealer to make available for inspection at the ordinary place of business of the dealer all accounts, vouchers and other documents relating to stocks, purchases, sales and deliveries of motor spirit, or to furnish any other information relating thereto, and every such wholesale and retail dealer shall comply with such requisition; and
- (b) inspect such accounts, vouchers and documents of, and the motor spirit stocked by, any wholesale or retail dealer.

(2) For the purpose of sub-section (1) any such person specially empowered by the Provincial Government in this behalf may enter and search at any time by day any building, vessel, vehicle or place in which he has reason to believe that any wholesale or retail dealer carries on business or keeps any stock of motor spirit.

(3) All searches made under sub-section (2) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

Act V of
1898.

12. Any question as to whether a tax or penalty is recoverable under this Act, the person from whom it is due, and the amount so recoverable shall be determined by the prescribed authority.

Determination of certain questions by the prescribed authority.

(Sections 13—16.)

Returns,
etc., to be
confiden-
tial.

13. No person to whom any returns under this Act are submitted or who makes an inspection under section 11 shall, save with the previous sanction of the Provincial Government, disclose any information obtained from any such return or inspection, otherwise than departmentally or for the purposes of a prosecution under the Indian Penal Code in respect of any such return, or of any account, voucher or other document inspected, or for the purposes of a prosecution under this Act.

Act XLV
of 1860.

Penalties.

14. Any person who—

- (a) carries on business in motor spirit as a wholesale or a retail dealer at any place except under a licence granted under sub-section (1) of section 4 or when the licence granted under that sub-section in respect of such place of business is no longer in force; or
- (b) fails to keep books of account as required by clause (a) of section 5; or
- (c) fails to submit any return as required by clause (b) of section 5 or by section 9 or submits a false return; or
- (d) fraudulently evades the payment of any tax due under this Act; or
- (e) neglects to furnish any information required by sub-section (2) of section 10 or acts in contravention of the provisions of that section; or
- (f) refuses to comply with a requisition under clause (a) of sub-section (1) of section 11 or obstructs any officer making an inspection or a search under section 11; or
- (g) discloses any information in contravention of the provisions of section 13; or
- (h) acts in contravention of any of the provisions of this Act;

shall on conviction be punished with fine which may extend to one thousand rupees, and in the case where the failure, evasion or contravention is a continuing one with a further fine which may extend to fifty rupees for every day after the first during which such failure, evasion or contravention continues subsequent to such conviction.

Offences
to be
cognizable
and
bailable.

15. All offences punishable under this Act shall be cognizable and bailable.

Power to
compound
offences.

16. (1) Subject to such conditions as may be prescribed the prescribed authority may accept from any person charged with any offence punishable under this Act or any rule made thereunder, by way of composition for such offence, payment of a sum of money not exceeding five hundred rupees or double the amount of the tax payable, whichever is greater.

The Bengal Motor Spirit Sales Taxation Act, 1941. 187
of 1941.]

(Sections 17—21.)

(2) If payment by way of composition is accepted under sub-section (1), the accused, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

17. (1) No Court shall take cognizance of any offence under this Act or the rules made thereunder except upon a complaint made with the previous sanction of the prescribed authority. Jurisdiction to try offences.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try an offence punishable under this Act.

Act XLV
of 1860.

18. All persons empowered to perform any function under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. Officers to be deemed public servants.

19. No suit, prosecution or other legal proceedings shall Indemnity.

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To sub-section (1) of section 20, add the following proviso, namely:—

“Provided that an appeal from an order under sub-section (1) of section 7, determining the amount of tax due from a retail dealer may be preferred within thirty days from the date of service of the notice of demand issued under that sub-section.”.

(Added by West Ben. Act XIV of 1954, section 3.)
[No. 53, dated the 11th June, 1954.]

record of any order passed in the proceedings reviewed by any officer or person subordinate to such authority, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

(4) Nothing in this section shall apply to the orders or proceedings of any Court or Magistrate.

21. (1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form of application for licence under sub-section (4) of section 4 and the authority which may grant licences;
- (b) the form of licence, the particulars to be contained therein and the conditions subject to which licences may be granted;
- (c) the conditions subject to which licences may be suspended or cancelled;

(Section 21.)

(d) the forms in which books of account under clause

Page 188—

After clause (e) of sub-section (2) of section 21, insert the following clause, namely:—

“(ee) the manner of service of notice of demand referred to in sub-section (1) of section 7;”.

(Inserted by West Ben. Act XIV of 1954, section 4.)

[No. 53, dated the 11th June, 1954.]

SUB-SECTION (2)

(g) the authority referred to in section 12;

(h) the authority which may accept under sub-section (1) of section 16, payment by way of composition for offences under this Act and the conditions under which such offences may be compounded;

(i) the authority which may sanction prosecutions under this Act;

(j) the authority to which an appeal shall lie under sub-section (1) of section 20 and which may exercise powers under sub-section (3) of that section.

(3) In making any rule, the Provincial Government may provide that a breach of it shall be punishable with a fine not exceeding fifty rupees.

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After section 21, insert new section 22—

“22. (1) Nothing in this Act shall be construed to imply the imposition of a tax on the sale or purchase of

(a) where the sale or purchase takes place outside the Bengal;

shall apply for the interpretation of clause (a) of s

(Inserted by Adaptation Order, 1950, paragraph 3 and Schedule.)

[No. 47, dated the 1st February, 1952.]

Bengal Act VI of 1941

THE BENGAL FINANCE (SALES TAX) ACT, 1941.

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26. Power to make rules.

THE SCHEDULE.

Bengal Act VI of 1941¹

THE BENGAL FINANCE (SALES TAX) Act, 1941.

[1st July, 1941.]

An Act to impose a general tax on the sale of goods in Bengal.

WHEREAS it is necessary to make an addition to the revenues of Bengal, and for that purpose to impose a general tax on the sale of goods in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Finance (Sales Tax) Act, 1941. Short title, extent and commencement.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “Commissioner” means the Commissioner of Commercial Taxes appointed under sub-section (1) of section 3;

(b) “contract” means any agreement for carrying out for cash or deferred payment or other valuable consideration—

(i) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property, or

(ii) the installation or repair of any machinery affixed to a building or other immovable property, or

(iii) the overhaul or repair of any motor vehicle;

(c) “dealer” means any person, firm or Hindu joint family, engaged in the business of selling or supplying goods in ²[West Bengal]; and where the main place of business of any such person, firm or Hindu joint family is not in ²[West Bengal], “dealer” means the manager or other agent of such person, firm or Hindu joint family in ²[West Bengal]:

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated 7th November, 1940, Part IVA, page 315; for Report of the Select Committee, see *Calcutta Gazette*, dated the 13th February, 1941, Part IVA, page 37; for Proceedings in the Bengal Legislative Assembly, see *Bengal Legislative Assembly Proceedings*, 1940, Volume LVIII, pages 106-48, 149-92 and 217-28, *ibid* 1941, Volume LIX—No. 1, pages 34, 138-73, 209-31, 309-41, *ibid* No. 2, pages 305-40, 351-85, 409-66, and *ibid* No. 6, pages 133-41 and for Proceedings in the Bengal Legislative Council, see *Bengal Legislative Council Proceedings*, 1941, Volume 1, pages 310-16, 365-92 and *ibid*, Volume 2, pages 471-95, 503-41 and 609-33.

²See footnote 2 on page 1, *ante*.

³The Act was brought into force on the 1st July, 1941, vide notification No. 1648F., dated 30th June, 1941, published in Part I, page 57, of the *Calcutta Gazette, Extraordinary*, dated the 1st July, 1941.

(Section 2.)

Explanation.—A co-operative society or a club or any association which sells or supplies goods to its members is a dealer within the meaning of this clause;

- (d) "goods" means all kinds of movable property other than actionable claims, stocks, shares or securities, and includes all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of immovable property;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "registered" means registered under this Act;
- (g) "sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge:

Explanation 1.—A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale:

Explanation 2.—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which are actually in ¹[West Bengal] at the time when the contract of sale (as defined in that Act) in respect thereof is made, shall, wherever the said contract of sale is made, be deemed for the purposes of this Act to have taken place in ¹[West Bengal];

III of
1930.

- (h) "sale-price" means the amount payable to a dealer as valuable consideration for—
 - (i) the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged; or
 - (ii) the carrying out of any contract, less such portion as may be prescribed of such amount, representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract;
- (i) "turnover" means the aggregate of the amounts of sale-prices and parts of sale-prices received by any dealer during a given period; and
- (j) "year" means in relation to any particular dealer, the year for which the accounts of that dealer are ordinarily maintained in his books.

¹See footnote 2 on page 1, ante.

(Sections 3, 4.)

3. (1) For carrying out the purposes of this Act, the Provincial Government may appoint a person to be Commissioner of Commercial Taxes, together with such other persons to assist him as it thinks fit. Taxing
authori-
ties.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(3) All persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

4. (1) Subject to the provisions of sections 5 and 6 and with effect from such date as the Provincial Government may, by notification in the *Official Gazette*, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified: Incidence
of tax-
ation.

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into on or before the date so notified.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from three months after the commencement of the year immediately following that during which his gross turnover first exceeds the taxable quantum.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover has failed to exceed the taxable quantum and such further period after the date of such expiry as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from three months after the commencement of the year immediately following that during which his gross turnover again exceeds the taxable quantum.

(5) In this Act the expression "taxable quantum" means—

(a) in relation to any dealer who imports for sale any goods into ¹[West Bengal], or himself manufactures or produces any goods for sale, 10,000 rupees; or

(b) in relation to particular classes of dealers not falling within clause (a), such sum as may be prescribed; or

(c) in relation to any other dealer, 50,000 rupees.

¹See footnote 2 on page 1, ante.

(Sections 5, 6.)

Rate of
tax.

5. (1) The tax payable by a dealer under this Act shall be levied at the rate of ¹[three-quarters] of an anna in the rupee on his taxable turnover.

(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom—

(a) his turnover during that period on—

(i) the sale of goods declared tax-free under section 6;

(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him, or for use by him in the manufacture of any goods for sale or in the execution of any contract, and on sales to a registered dealer of containers and other materials for the packing of such goods;

(iii) sales to the Indian Stores Department, the Supply Department of the Government of India, and any railway or water transport administration;

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy; IX of 1910.

(v) sales of goods which are shown to the satisfaction of the Commissioner to have been despatched by, or on behalf of, the dealer to an address outside ²[West Bengal];

(vi) such other sales as may be prescribed; and

(b) ³[four and one-half *per centum*] of the balance remaining after making the deductions allowed by sub-clauses (i) to (vi) of clause (a).

Tax-free
goods.

6. (1) No tax shall be payable under this Act on the sale of goods specified in the first column of the schedule, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof.

(2) The Provincial Government, after giving by notification in the *Official Gazette*, not less than three months' notice of its intention so to do, may by like notification add to the schedule, and thereupon the schedule shall be deemed to be amended accordingly.

¹These words within square brackets were substituted for the words "one half" by section 4, of the West Bengal Finance (Amendment and Repeal) Act, 1948 (West Ben. Act X of 1948).

²See footnote 2 on page 1, *ante*.

³These words within square brackets were substituted for the words "three per centum" by section 4 of the West Bengal Finance (Amendment and Repeal) Act, 1948 (West Ben. Act X of 1948).

of 1941.]

(Sections 7, 8.)

7. (1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered and possesses a registration certificate. Registration of dealers.

(2) Every dealer required by sub-section (1) to be registered shall make application in such behalf in the prescribed manner to the prescribed authority.

(3) If the said authority is satisfied that an application for registration is in order, he shall in accordance with such rules as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of sub-clause (ii) of clause (a) of sub-section (2) of section 5.

(4) The Commissioner may from time to time amend any certificate of registration in accordance with information furnished under section 16 or otherwise received.

(5) When any dealer has been convicted or has paid composition money under section 23, in respect of any contravention of sub-section (1) of this section, the Commissioner shall register such dealer and grant him a certificate of registration, and such registration shall take effect as if it had been made under sub-section (3) of this section on the dealer's application.

(6) When—

(a) any business in respect of which a certificate has been granted upon application made under sub-section (2) has been discontinued or transferred, or

(b) the gross turnover of any such business has during each of three consecutive years failed to exceed the taxable quantum,

the Commissioner shall cancel the registration.

8. (1) Any dealer whose gross turnover during a year exceeds 10,000 rupees may, notwithstanding that he may not be liable to pay tax under section 4, apply in the prescribed manner to the prescribed authority for registration under this Act. Voluntary registration.

(2) The provisions of sub-sections (3) and (4) and clause (a) of sub-section (6) of section 7 shall apply in respect of applications for registration under this section.

(3) Every dealer who has been registered upon application made under this section shall, for so long as his registration remains in force, be liable to pay tax under this Act.

(4) The registration of a dealer upon application made under this section shall be in force for a period of not less than three complete years and shall remain in force thereafter unless cancelled under the provisions of this Act.

(5) Subject to the provisions of sub-section (4), a dealer registered upon application made under this section may apply in the prescribed manner not less than six months before the end of a year to the authority which granted him his certificate of registration for the cancellation of such

(Sections 9—11.)'

registration to take effect at the end of the year in which the application for such cancellation is made; and the said authority shall, unless the dealer is liable to pay tax under section 4, cancel the registration accordingly.

List of
registered
dealers to
be pub-
lished.

9. The Provincial Government shall, as soon as may be after the commencement of this Act, publish in the *Official Gazette*, a list of the names and addresses of registered dealers together with a description of the goods covered by their certificates of registration, and thereafter shall in like manner from time to time publish—

(a) such particulars of any dealer who is subsequently registered or whose registration is cancelled, as soon as may be after such registration or cancellation, and

(b) annually a consolidated list of modifications of the first list published under this section.

Payment
of tax and
returns.

10. (1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

(2) Such dealers as may be required so to do by the Commissioner by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed:

Provided that, if any dealer establishes to the satisfaction of the Commissioner that his average taxable turnover does not exceed ten *per centum* of his average gross turnover, the returns to be furnished by such dealer under this sub-section shall be annual returns.

(3) Before any registered dealer furnishes the returns required by sub-section (2), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the full amount of tax due from him under this Act according to such returns, and shall furnish along with the returns a receipt from such Treasury or Bank showing the payment of such amount.

(4) If any dealer discovers any omission or other error in any return furnished by him, he may at any time before the date prescribed for the furnishing of the next return by him furnish a revised return; and if the revised return shows a greater amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment in the manner provided in sub-section (3) of the extra amount.

Assess-
ment of
tax.

11. (1) If no returns are furnished by a registered dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall, within twelve months after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer.

(Sections 12, 13.)

(2) If upon information which has come into his possession, the Commissioner is satisfied that any dealer, who imports for sale any goods into ¹[West Bengal] or himself manufactures or produces any goods for sale, has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, the Commissioner shall, at any time within three calendar years from the commencement of this Act and thereafter within twelve months from the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods; and the Commissioner may direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed a sum not exceeding one and a half times that amount.

(3) The amount of tax—

- (a) due where the returns are furnished without receipt showing full payment thereof, or
- (b) assessed under sub-section (1), less the sum, if any, already paid by the dealer in respect of the said period; or
- (c) assessed under sub-section (2), together with the penalty directed to be paid under that sub-section,

shall be paid by the dealer into a Government Treasury or the Reserve Bank of India by such date as may be specified in a notice issued by the Commissioner for this purpose and the date to be so specified shall be not less than thirty days from the date of service of such notice:

Provided that the Commissioner may, in respect of any particular dealer and for reasons to be recorded in writing, extend the date of such payment or allow such dealer to pay the tax due and the penalty (if any) by instalments.

(4) Any amount of tax which remains unpaid after the date specified in the said notice shall be recoverable as an arrear of land-revenue.

(5) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence against this Act.

12. The Commissioner shall, in the prescribed manner, refund to a registered dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act, either by cash payment, or, at the option of the dealer, by deduction of such excess from the amount of tax due in respect of any other period. **Refunds.**

13. Every registered dealer or other dealer on whom a notice has been served to furnish returns under sub-section (2) of section 10, shall keep a true account of the value of **Accounts.**

¹See footnote 2 on page 1, ante.

(Sections 14—17.)

goods bought and sold by him, and if the Commissioner considers that such account is not sufficiently clear and intelligible to enable him to make a proper check of the returns referred to in that sub-section, he may require such dealer by notice in writing to keep such accounts (including records of sales) as may be prescribed.

Produc-
tion and
inspection
of accounts
and docu-
ments, and
search of
premises.

14. (1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer to produce before him any accounts or documents, or to furnish any information, relating to the stocks of goods of, or purchases, sales and deliveries of goods by, the dealer as may be necessary for the purposes of this Act.

(2) All accounts, registers and documents relating to the stocks of goods of, or purchases, sales and deliveries of goods by, any dealer and all goods kept in any place of business of any dealer shall at all reasonable times be open to inspection by the Commissioner.

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution.

(4) For the purposes of sub-section (2) or sub-section (3) the Commissioner may enter and search any place of business of any dealer.

Delegation
of Commis-
sioner's
powers

15. Subject to such restrictions and conditions as may be prescribed, the Commissioner may by order in writing delegate any of his powers under this Act [except those under section 18 and sub-section (2) of section 22] to any person appointed under section 3 to assist him.

Informa-
tion to be
furnished
regarding
changes of
business.

16. If any dealer to whom the provisions of sub-section (2) of section 10 apply,—

- (a) sells or otherwise disposes of his business or any part of his business or any place of business, or
- (b) discontinues his business or changes his place of business or opens a new place of business, or
- (c) changes the name or nature of his business,

he shall within the prescribed time inform the prescribed authority accordingly; and if any such dealer dies, his legal representative shall in like manner inform the said authority.

Tax pay-
able by
transferee
of business.

17. When the ownership of the business of a registered dealer is transferred, any tax payable in respect of such business remaining unpaid at the time of the transfer shall be payable by the transferee as if he was the registered dealer; and the transferee shall within thirty days of the transfer apply for registration under section 7.

of 1941.]

(Sections 18—20.)

18. If any question arises (otherwise than in a proceeding before a Court) whether or not for the purpose of this Act—

Power to Commissioner to determine disputes.

- (a) any person or firm or any branch or department of any firm is a dealer, or
- (b) any transaction is a sale or contract, or
- (c) any particular goods purchased by a registered dealer are covered by his certificate of registration, or
- (d) any tax is payable in respect of any particular sale or contract, or
- (e) any goods or classes of goods should be specified in the certificate of registration of any dealer under sub-section (3) of section 7.

the Commissioner shall determine such question:

Provided that any such determination shall not affect the liability of any dealer under this Act in respect of any contract entered into or sale effected prior to such determination, unless the Commissioner is satisfied that the dealer has been wilfully evading or attempting to evade payment of tax in respect of any sale of, or contract for supply of, any goods to which such determination relates.

19. Save as is provided in section 21, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any person appointed under section 3 to assist him shall be called into question in any Civil Court, and save as is provided in section 20, no appeal or application for revision or review shall lie against any such assessment or order.

Bar to certain proceedings.

20. (1) Within sixty days from the receipt of a notice issued under sub-section (3) of section 11, any dealer may in the prescribed manner appeal to the prescribed authority against such assessment:

Appeal, revision and review.

Provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of tax as the appellant may admit to be due from him has been paid.

(2) Subject to such rules of procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may—

- (a) confirm, reduce, enhance or annul the assessment or;
- (b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed.

(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any order passed under this Act or the rules thereunder by a person

(Section 21.)

appointed under section 3 to assist him, and subject as aforesaid, the Board of Revenue may, in like manner, revise any order passed by the Commissioner:

Provided that before rejecting any application for the revision of any such order the Commissioner or the Board of Revenue, as the case may be, shall consider it and shall record reasons for such rejection.

(4) Subject to such rules as may be prescribed, any order passed under this Act or the rules made thereunder by any person appointed under section 3 may be reviewed by the person passing it.

(5) Before any order is passed under this section which is likely to affect any person adversely, such person shall be given reasonable opportunity of being heard.

Statement
of case to
High
Court.

21. (1) Within sixty days from the passing by the Board of Revenue of any order under sub-section (3) of section 20 affecting any liability of any dealer to pay tax under this Act, such dealer may, by application in writing accompanied by a fee of one hundred rupees, require the Board to refer to the High Court any question of law arising out of such order.

(2) If, for reasons to be recorded in writing, the Board of Revenue refuses to make such reference, the applicant may, within thirty days of such refusal, either—

(a) withdraw his application (and if he does so, the fee paid shall be refunded), or

(b) apply to the High Court against such refusal.

(3) If upon the receipt of an application under clause (b) of sub-section (2), the High Court is not satisfied of the correctness of the Board's decision, it may require the Board to state the case and refer it, and on the receipt of such requisition, the Board shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Board of Revenue to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Board of Revenue a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Board shall dispose of the case accordingly.

(6) Where a reference is made to the High Court under this section, the costs (including the disposal of the fee) shall be in the discretion of the Court.

(7) The payment of the amount, if any, of tax due in accordance with the order of the Board of Revenue in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such

of 1941.]

(Sections 22, 23.)

application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the excess tax paid shall be refunded in accordance with the provisions of section 12.

22. (1) Whoever—

Offences
and
penalties.

- (a) carries on business as a dealer in contravention of sub-section (1) of section 7; or
- (b) fails, without sufficient cause, to submit any return as required by sub-section (2) of section 10 or submits a false return; or
- (c) being a registered dealer, falsely represents when purchasing any class of goods, that goods of such class are covered by his certificate of registration; or
- (d) not being a registered dealer, falsely represents when purchasing goods that he is a registered dealer; or
- (e) fails, when required so to do under section 13, to keep prescribed accounts or records of sales; or
- (f) refuses to comply with any requirement made of him under sub-section (1) of section 14; or
- (g) knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information; or
- (h) obstructs any officer making an inspection or a search or a seizure under section 14; or
- (i) neglects to furnish any information required by section 16;

shall be punishable with fine not exceeding one thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

(2) No Court shall take cognizance of any offence under this Act, or under the rules made thereunder except with the previous sanction of the Commissioner, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

(3) All offences punishable under this Act shall be cognisable and bailable.

23. (1) Subject to such conditions as may be prescribed the Commissioner may accept from any person charged with an offence under sub-section (1) of section 22 or under any rules made under this Act, by way of composition of the offence, a sum not exceeding one thousand rupees or where the offence charged is under clause (a) or clause (b) of that sub-section, not exceeding double the amount of tax which would have been payable by the dealer had he complied with the provisions of this Act, whichever is greater.

Compounding
of
offences.

(2) On payment of such sum as may be determined by the Commissioner under sub-section (1), the accused person shall be discharged and no further proceedings shall be taken against him in respect of the same offence.

(Sections 24—26.)

Indemnity. 24. No suit, prosecution or other legal proceedings shall lie against any servant of the Crown for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Returns, etc., to be confidential. 25. (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act other than proceedings before a Criminal Court, shall, save as provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as aforesaid, be entitled to require any servant of the Crown to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof.

I of 1872.

(2) If, save as provided in sub-section (3), any servant of the Crown discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure of any of the particulars referred to in sub-section (1) for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, document or evidence, or for the purposes of a prosecution under this Act.

Act XLV
of 1860.

Power to make rules.

26. (1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the proportion referred to in sub-clause (ii) of clause (h) of section 2;
- (b) the further period after the date of expiry of three consecutive years referred to in sub-section (3) of section 4;
- (c) the taxable quantum for particular classes of dealers under clause (b) of sub-section (5) of section 4;
- (d) the other sales, turnover, in respect of which may be deducted from a dealer's gross turnover in computing his taxable turnover as defined in section 5;
- (e) the authority to which applications for registration under section 7 or section 8 shall be made;
- (f) the procedure for, and other matters incidental to, the registration of dealers and the granting of certificates of registration, and the form of such certificates under section 7 or section 8;
- (g) the intervals at which, and the manner in which, the tax under this Act shall be payable under section 10;

of 1941.]

(Section 26.)

- (h) the returns to be furnished under sub-section (2) of section 10, and dates by which, and the authority to which, such returns shall be furnished;
 - (i) the date by which returns for any period are to be furnished and the procedure to be followed for assessment under section 11;
 - (j) the manner in which refunds under section 12 shall be made;
 - (k) the accounts and forms thereof required by section 13;
 - (l) the conditions under which the production of accounts or documents or the furnishing of information may be required under sub-section (1) of section 14;
 - (m) the restrictions and conditions subject to which the Commissioner may delegate his powers under section 15;
 - (n) the authority to which information shall be furnished under section 16;
 - (o) the manner in which, and the authority to which, appeals against assessment may be preferred under section 20;
 - (p) the procedure for, and other matters (including fees) incidental to, the disposal of appeals and applications for revisions and reviews under section 20;
 - (q) the conditions under which offences may be compounded under section 23;
 - (r) the manner in which, and the time within which, applications shall be made, information furnished and notices served, under this Act;
 - (s) the sacred books referred to in item 24 in the first column of the Schedule.
- (3) In making any rule the Provincial Government may direct that a breach thereof shall be punishable with fine not exceeding five hundred rupees, and when the offence is a continuing one, with a daily fine not exceeding twenty-five rupees during the continuance of the offence.

THE SCHEDULE.

(See section 6.)

1	2
1. All cereals and pulses (including all forms of rice, raw or cooked).	Except when sold in sealed containers.
2. Flour (including <i>atta</i> , <i>suji</i> and bran).
3. Bread

(The Schedule.)

1	2
4. Meat which has not been cured or frozen.
5. Fresh fish
6. Vegetables, green or dried ..	Except when sold in sealed containers.
7. Cooked foods, other than cakes, pastries and sweet-meats.	Ditto.
8. <i>Gur</i> , sugar and molasses
9. Salt
10. Mustard oil, rape oil and mixtures of mustard and rape oil.
¹ [10A. Mustard seed and rape seed]
11. Milk
12. Livestock, including poultry
13. Agricultural implements
14. Fertilizers
15. Yarn
16. ² [<i>Dhooties, lungies and sarees</i>	When the sale price of a <i>dhooti, lungi</i> or <i>saree</i> does not exceed such amount as the Provincial Government may fix in respect of <i>dhooties, lungies</i> or <i>sarees</i> , as the case may be, by notification in the <i>Official Gazette</i> :
	Provided that the Provincial Government may fix different amounts for <i>dhooties, lungies</i> or <i>sarees</i> of different sizes.]
17. Kerosene oil
18. Tobacco for <i>hookah</i>
19. Matches
20. Quinine and febrifuge
21. Text-books approved for Primary Classes (I-IV) and such sacred books as may be prescribed.
22. Bullion and specie

¹This new item 10A was inserted by the Government of Bengal, Finance Department, Notification No. 2588-F., dated the 2nd December, 1942, published in the *Calcutta Gazette*, 1942, Part I, page 2728.

²The entries in square brackets in columns 1 and 2 of the schedule were substituted for the following entries by section 3 of the Bengal Finance (Sales Tax) Amendment Act, 1944 (Ben. Act I of 1944), namely :—

Hand-loom woven cloth—when sold by a dealer who does not sell any other kinds of cloth.

(The Schedule.)

1	2
23. Gold ornaments manufactured from bullion or specie.	When sold by the manufacturer who charges separately for the value of the gold and the cost of manufacture.
24. Coal and coke
25. Country liquor (including <i>tari</i> and <i>pachwai</i>), potable foreign liquor (including medicated wines), <i>ganja</i> , excise opium (excluding preparations of opium), <i>bhang</i> and <i>charas</i>
26. Water, but not aerated or mineral waters when sold in bottles or sealed containers.
27. Electrical energy
28. Coal Gas	When sold by a Gas Supply Company for consumption— (a) by Government or any local authority, or (b) in respect of any industrial undertaking (other than in residential or office premises), or (c) in any place declared by the Provincial Government to be exclusively used for public charity.
29. Motor spirit, that is to say, any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for any form of motor vehicle or stationary internal combustion engine, and which has a flashing point below 76 degrees Fahrenheit.
30. Newspapers
31. Raw hides and raw skins
¹ [32. Raw Jute]

¹This new item 32 was inserted by the Government of Bengal, Finance Department, Notification No. 1358-F., dated the 2nd June, 1942, published in the *Calcutta Gazette*, dated the 11th June 1942, Part I, page 1498.

(The Schedule.)

1	2
¹ [33. Plain paper, commonly known as "Cartridge paper" sold by Government Treasuries through the agency of licensed stamp vendors.]
² [34. Eggs]
³ [35. Fresh fruits]
⁴ [36. Sago, that is to say, any Article sold in the market by the name of sago.]
⁵ [37. Charkha]
38. Cotton
39. Handmade paper
40. Fuel wood
41. Handloom woven cloth not being <i>dhooties</i> , <i>lungies</i> or <i>sarees</i> .]
⁶ [42. Charcoal]

¹This new item was added by the Finance Department notification No. 370-F.T., dated the 4th October, 1945, published in the *Calcutta Gazette*, dated the 11th October, 1945, Part I, page 1666.

²This new item was added by the Finance Department notification No. 9520-Taxn., dated the 24th June, 1946, published in the *Calcutta Gazette*, dated the 4th July, 1946, Part I, page 1025.

³This new item was added by the Finance Department notification No. 5836-Taxn., dated the 12th May, 1947, published in the *Calcutta Gazette*, dated the 22nd May, 1947, Part I, page 965.

⁴This new item was added by the Finance Department notification No. 67-F.T., dated the 7th October, 1947, published in the *Calcutta Gazette*, dated the 16th October, 1947, Part I, page 225.

⁵These new items were added by the Finance Department notification No. 608-F.T., dated the 29th April, 1948, published in the *Calcutta Gazette*, dated the 9th May, 1948, Part I, page 573.

⁶This new item was added by the Finance Department notification No. 1464-F.T., dated the 9th September, 1948, published in the *Calcutta Gazette*, dated the 23rd September, 1948, Part I, page 1278.

Bengal Act IX of 1941¹

THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1941.

[16th October, 1941.]

An Act further to amend the Court of Wards Act, 1879.

Ben. Act
IX of
1879.

WHEREAS it is expedient further to amend the Court of Wards Act, 1879, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Court of Wards (Amendment) Act, 1941. Short title.

2. *[Amendment of section 3 of Bengal Act IX of 1879.—Repealed by the West Bengal Repealing and Amending Act, 1948 (West Bengal Act VII of 1948).]*

3. *[Repeal of section 56.—Repealed by the West Bengal Repealing and Amending Act, 1948 (West Bengal Act VII of 1948).]*

4. The amendments made by sections 2 and 3 shall have effect in respect of all suits or proceedings including proceedings in execution which are pending on the date of commencement of this Act. Retrospective effect.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 10th July, 1941; for proceedings of the Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 30th July, 1941; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 11th and the 18th August, 1941.

Bengal Act XI of 1941¹

THE BENGAL RAW JUTE TAXATION ACT, 1941.

[27th November, 1941.]

An Act to provide for the levy of a tax on raw jute purchased by the occupiers of jute-mills and by shippers of jute.

WHEREAS it is expedient to provide for the levy of a tax on raw jute purchased by the occupiers of jute-mills and by shippers of jute for the purpose of carrying out measures for the stabilisation of jute prices and for furthering the interests of the growers of jute in the Province and of the jute industry generally;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Raw Jute Taxation Act, 1941. Short title, extent and commencement.
- (2) It extends to the whole of ²[West Bengal.]
- (3) It shall come into force on such date³ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context— Definitions.

- (1) "jute" means the plant known botanically as belonging to the *genus corchorus*, and includes all the species of that *genus* whether known commonly as *pat*, *kosta*, *nalia* or by any other name, and also means the plant known botanically as *hibiscus cannabinus* and commonly as *mesta*;
- (2) "jute-mill" means a factory as defined in, or declared to be a factory under, the Factories Act, 1934, which is engaged wholly or in part in the manufacture of jute products;
- (3) "maund" means the weight equivalent to a standard maund as specified under the Standards of Weight Act, 1939;
- (4) "occupier of a jute-mill" means the person who has ultimate control over the affairs of the jute-mill:

Provided that, where the affairs of a jute-mill are entrusted to a managing agent, such agent shall be deemed to be the occupier of the jute-mill;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 10th July, 1941; the Report of the Select Committee was presented to the Assembly on the 13th August, 1941; for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 30th July, 13th and 18th August, 1941; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 28th August, 4th, 9th and 10th September, 1941.

²See footnote 2 on page 1, *ante*.

³The Act came into force on the 1st day of January, 1942, *vide* notification No. 547J., dated the 31st December, 1941, published in the *Calcutta Gazette*, Extraordinary, dated the 1st January, 1942.

(Sections 3, 4.)

- (5) "prescribed" means prescribed by rules made under this Act;
- (6) "purchased" means purchased, delivered and accepted;
- (7) "quarter" means a period of three months ending on 31st March, 30th June, 30th September or 31st December in any year;
- (8) "raw jute" means the fibre of jute which has not been subjected to any process of spinning or weaving and includes jute cuttings, whether loose or packed in drums or bales;
- (9) "shipper of jute" means any person who purchases raw jute and supplies it himself or by an agent to any person including himself outside ¹[West Bengal].

Levy of
tax.

3. (1) Except as otherwise expressly provided in this Act, there shall be charged and levied a tax of two annas on every maund of raw jute purchased by the occupier of a jute-mill or purchased and despatched outside ¹[West Bengal] by any means of transit by a shipper of jute and such tax shall be payable to the Provincial Government by the occupier of every jute-mill and by every shipper of jute.

(2) No tax shall be leviable under this Act on any raw jute in respect of which such tax has already been paid or to which the provisions of sub-section (3) apply:

Provided that the burden of proving that such tax has already been paid shall be upon the person who claims the benefit of this sub-section.

(3) No tax shall be leviable under this Act on any raw jute purchased under a contract entered into before the date of commencement of this Act.

No pre-
mises to
be used
as a jute-
mill
unless
registered.

4. (1) No premises shall, after the commencement of this Act, be used as a jute-mill unless such premises have been registered by the occupier of the jute-mill and every such registration shall be renewed annually, by the occupier of such jute-mill:

Provided that, where any premises are, at the commencement of this Act, used as a jute-mill, the occupier of such jute-mill shall be allowed two months from such commencement to effect such registration.

(2) An application for registration or renewal thereof under this section shall be made in such form and to such authority as may be prescribed, and the prescribed authority shall, in the prescribed manner and form, maintain a record of every registration and renewal thereof.

(3) The registration of any jute-mill may, with the previous sanction of the Provincial Government, be cancelled by the registering authority if the premises registered have ceased to be used as a jute-mill.

¹See footnote 2 on page 1, ante.

of 1941.]

(Sections 5—7.)

5. (1) No person shall, after the commencement of this Act, carry on business as a shipper of jute unless his name has been registered as such and every such registration shall be renewed annually by every shipper of jute:

No person to carry on business as a shipper of jute without registration of his name.

Provided that any person carrying on business as a shipper of jute at the commencement of this Act shall be allowed two months from such commencement to effect such registration.

(2) An application for registration or renewal thereof under this section shall be made in such form and to such authority as may be prescribed, and the prescribed authority shall, in the prescribed manner and form, maintain a record of every registration and renewal thereof.

(3) The registration of any shipper of jute may, with the previous sanction of the Provincial Government, be cancelled by the registering authority if the registered person has ceased to carry on, or has sold or otherwise transferred his interest in the business in respect of which his name was registered.

6. Every occupier of a jute-mill shall in respect of such jute-mill—

Occupiers of jute-mills to keep books of account and submit returns.

- (a) keep books of account relating to the purchase of raw jute in the prescribed form; and
- (b) submit every quarter to such authority as may be prescribed a return in the prescribed form and before the prescribed date showing—
 - (i) the quantity of raw jute held in stock in the jute-mill at the beginning of the preceding quarter;
 - (ii) the quantity of raw jute purchased by him for the jute-mill during the preceding quarter;
 - (iii) the quantity of raw jute despatched from the jute-mill during the preceding quarter;
 - (iv) the quantity of raw jute held in stock in the jute-mill at the end of the preceding quarter; and
 - (v) such other particulars necessary for the purposes of this Act as may be prescribed.

7. Every shipper of jute shall, in respect of his business and at each place at which he carries on such business—

Shippers of jute to keep books of account and submit returns.

- (a) keep books of account relating to the purchase and despatch by any means of transit of raw jute in the prescribed form; and
- (b) submit every month to such authority as may be prescribed a return in the prescribed form and before the prescribed date showing—
 - (i) the quantity of raw jute held in stock by him at the beginning of the preceding month;
 - (ii) the quantity of raw jute purchased by him during the preceding month;

(Sections 8, 9.)

- (iii) the quantity of raw jute despatched by him outside ¹[West Bengal] by any means of transit during the preceding month;
- (iv) the quantity of raw jute held in stock by him at the end of the preceding month; and
- (v) such other particulars necessary for the purposes of this Act as may be prescribed.

Payment
of tax and
receipt for
such pay-
ment.

8. Before submitting in each period the return referred to in clause (b) of sections 6 and 7 the occupier of a jute-mill or shipper of jute, as the case may be, shall pay into a Government Treasury or the Reserve Bank of India the full amount of the tax due under this Act in respect of the raw jute purchased by him, or purchased and despatched outside ¹[West Bengal] by any means of transit by him, as the case may be, according to such return, and shall furnish along with the return a receipt from such treasury or bank showing payment of such amount.

Determi-
nation of
the
amount of
tax by the
prescribed
authority
in certain

9. (1) If no return is submitted by the occupier of a jute-mill under clause (b) of section 6 or by a shipper of jute under clause (b) of section 7 in respect of any period before the date prescribed in that behalf, or if the return is submitted without a receipt showing full payment of the tax due as required by section 8, or if the return submitted appears to the authority referred to in clause (b) of sections 6 and 7 to be incorrect or incomplete, such authority shall, after making such enquiry, if any, as it considers necessary, determine the amount of the tax due in respect of such period from such occupier or shipper of jute, as the case may be, and such authority may in the case where no return is submitted direct that such occupier or shipper of jute shall pay in addition to the amount of the tax so determined a sum not exceeding that amount by way of penalty and the amount of the tax so determined together with the penalty (if any) so directed to be paid, less the sum, if any, already paid by him, shall be paid by such occupier or shipper of jute into a Government Treasury or the Reserve Bank of India within fourteen days after demand is made therefor:

Provided that, before action is taken under this sub-section, the occupier of a jute-mill or the shipper of jute, as the case may be, shall be given a reasonable opportunity of proving the correctness and completeness of the return, if any, submitted by him:

Provided further that the authority referred to in clause (b) of sections 6 and 7 may, for reasons to be recorded in writing, extend the date of such payment.

(2) If the amount of the tax due and the penalty (if any) directed to be paid under sub-section (1) are not paid within the period mentioned in that sub-section or within the period of any extension of time allowed under the second proviso to the said sub-section, the authority referred to in clause (b)

(Sections 10—12.)

of sections 6 and 7 may direct that the occupier of the jute-mill or the shipper of jute shall pay in addition to the amount of the tax and penalty (if any) so unpaid a sum not exceeding the amount of the tax by way of penalty or further penalty as the case may be.

(3) If default is made in making the payment of the amount of tax due or any penalty directed to be paid under sub-section (1) within the period mentioned in that sub-section or within the period of any extension of time allowed under the second proviso to the said sub-section or in making the payment of any penalty directed to be paid under sub-section (2), it shall be recoverable from the person from whom it is due as an arrear of land revenue.

10. The authority referred to in clause (b) of sections 6 and 7 shall, in the prescribed manner, refund to the occupier of a jute-mill or a shipper of jute applying in this behalf any amount of the tax paid by such occupier or shipper of jute in excess of the amount due from him under this Act either by cash payment or, at the option of such occupier or shipper of jute, by deduction of such excess from the amount of the tax due in respect of any other period. **Refunds.**

11. (1) Any person empowered by the Provincial Government in this behalf may, for the purposes of this Act— **Powers of inspection, entry and search.**

(a) require any occupier of any jute-mill or shipper of jute to produce before such person all accounts, vouchers and other documents relating to stocks, purchases, receipts and despatches of raw jute, and to furnish any other information relating to such stocks, purchases, receipts and despatches and every such occupier and shipper of jute shall comply with such requisition; and

(b) inspect such accounts, vouchers and documents of, and the raw jute held in stock by, such occupier or shipper of jute.

(2) Any such person specially empowered by the Provincial Government in this behalf may enter and search, at any time, by day any building, vessel, vehicle or place in which he has reason to believe that any occupier of a jute-mill or shipper of jute holds any stock of raw jute.

Act V of 1898.

(3) All searches made under sub-section (2) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

Act XI.V of 1860.

12. No person to whom any returns under this Act are submitted or who makes an inspection under section 11 shall, save with the previous sanction of the Provincial Government, disclose any information obtained from any such return of inspection otherwise than departmentally or for the purposes of a prosecution under the Indian Penal Code in respect of any such return, or of any account, voucher or other document inspected, or for the purposes of a prosecution under this Act. **Returns, etc., to be confidential.**

*(Sections 13—17.)***Penalties.****13.** Any person who—

- (a) being the occupier of a jute-mill fails to register such jute-mill as required by section 4; or
- (b) being a shipper of jute fails to register his name as required by section 5; or
- (c) fails to keep books of account as required by clause (a) of section 6 or 7 as the case may be; or
- (d) fails without sufficient cause to submit any return as required by clause (b) of section 6 or 7, as the case may be, or submits an incorrect or incomplete return, or fails to submit a receipt for the full amount of the tax due as required by section 8; or
- (e) fraudulently evades the payment of any tax due under this Act; or
- (f) refuses to comply with a requisition under clause (a) of sub-section (1) of section 11 or obstructs any officer making an inspection or a search under section 11; or
- (g) discloses any information in contravention of the provisions of section 12; or
- (h) acts in contravention of any of the provisions of this Act,

shall, on conviction, be punishable with fine which may extend to one thousand rupees, and in the case where the failure, evasion or contravention is a continuing one, with a further fine which may extend to one hundred rupees for every day after the first during which such failure, evasion or contravention continues subsequent to such conviction.

Institution of proceedings.

14. No proceedings in respect of any offence under this Act shall be instituted except with the previous sanction of such authority as may be prescribed and upon complaint by a person empowered under section 11.

Offences to be bailable.

15. All offences punishable under this Act shall be bailable.

Power to compound offences.

16. (1) The prescribed authority may accept from any person charged with any offence punishable under this Act or any rule made thereunder, by way of composition for such offence, payment of a sum of money not exceeding five hundred rupees or double the amount of the tax payable, whichever is greater.

(2) If payment by way of composition is accepted under sub-section (1), the accused, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

Jurisdiction to try offences.

17. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

xi of 1941.]

(Sections 18—22.)

**Act XLV
of 1860.**

18. All persons empowered to act under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Officers
to be
deemed
public
servants.

19. No suit, prosecution or other legal proceedings shall lie against any servant of the Crown for anything which is in good faith done or intended to be done under this Act.

Indemnity.

20. No suit shall be instituted against the Province, and no suit, prosecution or other proceedings shall be instituted against a servant of the Crown in respect of anything done or intended to be done under this Act, unless the suit, prosecution or other proceeding has been instituted within six months from the date of the act complained of.

Limita-
tion of
suits and
proceed-
ings.

21. (1) Any person aggrieved by any order under this Act may appeal within sixty days from the date of such order—

Appeal
and
revision.

**Ben. Act
III of
1923.**

(a) in Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923, and the districts of Hooghly, Howrah and 24-Parganas, to such authority as may be prescribed, and

(b) elsewhere—

(i) to the Commissioner of the Division if such order is passed by the Collector of a district, and

(ii) to the Collector of the district, if such order is passed by any officer other than the Collector.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) The prescribed authority may, at any time, either of its own motion or on application, call for and examine the record of any order passed or the proceedings recorded by any officer or person subordinate to such authority, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

(4) Nothing in this section shall apply to the orders or proceedings of any Court or Magistrate.

22. (1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

Power to
make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of application for registration and renewal thereof under sub-section (2) of section 4 or sub-section (2) of section 5, the authority to which such applications shall be made, the manner and form in which such authority shall maintain a record of registrations and renewals;

(Section 22.)

- (b) the forms in which books of account shall be kept under clause (a) of sections 6 and 7;
- (c) the authority to which returns are to be submitted under clause (b) of sections 6 and 7, the forms of such returns, the date before which they are to be submitted and the particulars which may be necessary for the purposes of this Act other than those specified in the said clauses to be contained in those returns;
- (d) the manner in which refunds under section 10 shall be made;
- (e) the authority which may, under section 14, accord previous sanction to the institution of proceedings;
- (f) the authority which may, under sub-section (1) of section 16, accept payment by way of composition for offences under this Act; and
- (g) the authority to which an appeal shall lie under clause (a) of sub-section (1) of section 21 and the authority which may exercise powers under sub-section (3) of that section.

(3) In making any rule under sub-section (1) or sub-section (2), the Provincial Government may provide that any person committing a breach thereof shall, on conviction, be punishable with fine which may extend to one hundred rupees.

Page 216—

After section 22, insert the following new section 23, namely:—

“23. (1) Notwithstanding anything contained in this Act,—

(a) a tax on the sale or purchase of raw jute shall not be imposed under this Act—

(i) where such sale or purchase takes place outside the State of West Bengal; or

(ii) where such sale or purchase takes in the course of import of the goods into, or export of the goods out of, the territory of India;

(b) a tax on the sale or purchase of raw jute shall not, after the day of March, 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The *Explanation* to clause (1) of article 286 of the Constitution shall apply for the interpretation of sub-clause (i) of clause (a) of sub-section (1).”

(Inserted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

Bengal Act IV of 1942¹

THE BENGAL CRIMINAL LAW (INDUSTRIAL AREAS) AMENDMENT ACT, 1942.

[4th June, 1942.]

An Act to prevent theft of unidentifiable articles in industrial areas.

WHEREAS it is expedient to prevent theft of unidentifiable articles in industrial areas;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Criminal Law (Industrial Areas) Amendment Act, 1942. Short title and extent.

(2) This section and section 2 extend to the whole of Bengal and the remaining provisions of this Act shall extend to any area declared to be an industrial area under section 2.

2. The Provincial Government may, by notification² in the *Official Gazette*, declare any area to be an industrial area for the purposes of this Act. Declaration of industrial area.

3. Any person found, between sunset and sunrise,— Apprehension and punishment of persons armed or previously convicted of theft or of other persons.

(a) armed with any dangerous or offensive instrument whatsoever, with intent to commit any criminal act;

(b) disguised in any manner with intent to commit any criminal act;

(c) in any dwelling-house or other building whatsoever, without being able satisfactorily to account for his presence therein; or

any person previously convicted of theft found between sunset and sunrise on board any vessel or boat, or lying or loitering in any bazar, street, yard, thoroughfare or other place who shall not give any satisfactory account of himself; or

any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person) any implement of house-breaking;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 19th July, 1941; the Report of the Select Committee was presented to the Council on the 11th December, 1941; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 28th July, 5th and 18th August, 2nd September and 11th December, 1941, and also 19th and 26th February, 1942; for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 10th March and the 2nd April, 1942.

²For notification declaring area to be an industrial area for the purposes of this Act, see notification No. 2260Pl., dated the 26th June, 1942, published in the *Calcutta Gazette, Extraordinary*, of the 27th June, 1942, page 127.

[Ben. Act IV of 1942.]

(Section 4.)

may be taken into custody by any police-officer without a warrant, and shall be liable, on summary conviction before a Magistrate, to imprisonment, for a term which may extend to three months.

Explanation.—In this section the word “street” means any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, to which the public have, permanently or temporarily, a right of access.

Possession
or dealing
with
thing
stolen
or fraud-
ulently
obtained.

4. (1) Whoever has in his possession or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe to have been stolen or fraudulently obtained, shall, if he fails to account for such possession or such act to the satisfaction of the Magistrate, be liable to fine which may extend to one hundred rupees, or to imprisonment, for a term which may extend to six months.

(2) If any person charged under sub-section (1) in respect of anything declares that he received such thing from some other person, or that he was employed as a carrier, agent or servant to convey such thing for some other person, the Magistrate, after such further inquiry (if any) as he may deem necessary, may summon such other person, and any former or pretended purchaser or other person through whose possession such thing is alleged to have passed, to appear before him, and may examine such person and any witnesses who are produced to testify to such receipt, employment or possession; and, if it appears to such Magistrate that any such person had possession of such thing and had reasonable cause to believe that it was stolen or fraudulently obtained, the Magistrate may punish him with fine which may extend to one hundred rupees, or with imprisonment, for a term which may extend to six months.

Bengal Act V of 1942¹

THE BENGAL TOUTS ACT, 1942.

[11th June, 1942.]

An Act for the suppression of touts in Courts and certain offices in Bengal.

WHEREAS it is expedient to make better provision for regulating the employment of clerks of Legal Practitioners and for the suppression of touts in Courts and certain offices in Bengal and to that end to amend the Legal Practitioners Act, 1879, the Indian Registration Act, 1908, and the Workmen's Compensation Act, 1923, in their application to Bengal, and also to amend the Bengal Village Self-Government Act, 1919, the Bengal Wakf Act, 1934, and the Bengal Agricultural Debtors Act, 1935, in the manner hereinafter appearing;

It is hereby enacted as follows:-

1. (1) This Act may be called the Bengal Touts Act, 1942.

Short
title and
commence-
ment.

(2) It shall come into force, in whole or in part, on such date as the Provincial Government may, by notification² in the *Official Gazette*, appoint, and for this purpose different dates may be appointed for different provisions of this Act.

2. The Legal Practitioners Act, 1879, the Indian Registration Act, 1908, and the Workmen's Compensation Act, 1923, shall, in their application to ³[West Bengal], be amended in the manner provided in this Act.

Amend-
ment of
the Legal
Practi-
tioners
Act, 1879,
the Indian
Registra-
tion Act,
1908, and
the
Work-
men's
Compen-
sation
Act, 1923,
in their
appli-
cation to
West
Bengal.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 2nd December, 1937; the Report of the Select Committee was presented to the Assembly on the 28th November, 1940; for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 16th February, 1938, 29th August and 28th November, 1940, and the 7th April, 1941; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 28th July and 4th, 5th and 12th August, 1941.

²The Act came into force on the 1st day of November, 1943, vide notification No. 3436J., dated the 18th September, 1943, published in the *Calcutta Gazette*, dated the 23rd September, 1943, Part I, page 1454.

³See footnote 2 on page 1, ante.

XVIII of
1879.
XVI of
1908.
VIII of
1923.
Ben. Act
V of 1919.
Ben. Act
XIII of
1934.
Ben. Act
VII of
1936.

(Sections 3—6.)

Amend-
ment of
section 3
of Act
XVIII of
1879.

3. After clause (b) in the definition of "tout" in section 3 of the Legal Practitioners Act, 1879, the following word and clause shall be added, namely:—

"or

(c) who is declared to be deemed to be a tout for the purposes of this Act by rules made by the High Court or the Chief Controlling Revenue-Authority, as the case may be, under section 31A."

Amend-
ment of
section 13
of Act
XVIII of
1879.

4. After clause (e) of section 13 of the Legal Practitioners Act, 1879, the following clause shall be inserted, namely:—

"(ee) who knowing that a person has not a licence under section 31A employs such person as a clerk, or".

Amend-
ment of
section 22
of Act
XVIII of
1879.

5. After clause (d) of section 22 of the Legal Practitioners Act, 1879, the following clause shall be inserted, namely:—

"(dd) who knowing that a person has not a licence under section 31A employs such person as a clerk, or".

Insertion
of new
Chapter
VIA in
Act
XVIII of
1879.

6. After Chapter VI of the Legal Practitioners Act, 1879, the following chapter shall be inserted, namely:—

"CHAPTER VIA.

Of clerks of Advocates, Vakils, Attorneys, Pleaders, Muktears and Revenue-agents.

31A. (1) The High Court may, from time to time, make rules¹ consistent with this Act as to employment, etc., of clerks of Advocates, Vakils, etc., and of Revenue-agents, as to the following matters, namely:—

- (a) the employment of clerks by Advocates, Vakils, Attorneys, Pleaders and Muktears;
- (b) the manner in which and the terms subject to which such clerks may be granted licences;
- (c) the fees (if any) to be paid for such licences;
- (d) the conditions under which persons acting as clerks of Advocates, Vakils, Attorneys, Pleaders and Muktears without licences shall be deemed to be touts for the purposes of this Act.

¹For rules under this sub-section, see notification No. 3437J., dated the 18th September, 1943, published in the *Calcutta Gazette*, dated the 23rd September, 1943, Part I, page 1454.

V of 1942.]

(Sections 7, 8.)

(2) The Chief Controlling Revenue-Authority may, from time to time, make rules¹ consistent with this Act relating to the matters specified in sub-section (1) in regard to clerks of Revenue-agents.

(3) All rules made under this section shall be submitted to the Provincial Government for approval, and, after they have been approved, they shall be published in the *Official Gazette* and on publication shall have effect as if enacted in this Act."

7. After sub-section (6) of section 36 of the Legal Practitioners Act, 1879, the following sub-sections shall be added, namely:—

Amendment of section 36 of Act XVIII of 1879.

"(7) Every person who having been excluded from the precincts of a Court under sub-section (4) enters or is found within the precincts of any Court without a written permission from the presiding officer of the Court shall be deemed to be acting as a tout within the meaning of sub-section (6):

Provided that this sub-section shall not apply where such person is a party to any case in the Court or has been directed to appear by any process of the Court.

(8) Any presiding officer of a Court may, by an order in writing, direct any person named in the order to arrest any such tout found within the precincts of the Court. Such tout may be arrested accordingly and shall be forthwith produced before the officer.

Act V of 1898.

If the tout admits his offence the provisions of sections 480 and 481 of the Code of Criminal Procedure, 1898, shall be applicable, so far as may be, to his detention, trial and punishment.

If the tout does not admit his offence the provisions of section 482 of the said Code shall be similarly applicable to his detention, trial and punishment."

8. In section 2 of the Indian Registration Act, 1908,—

Amendment of section 2 of Act XVI of 1908.

(1) the word "and" at the end of clause (9) shall be omitted; and

(2) after clause (10) the following word and clause shall be added, namely:—

"and

(11) 'tout' means a person—

(a) who habitually frequents the precincts of a registration office, without a licence granted to him under the rules made under section 80G, for the purpose of obtaining employment for himself or for any other person in connection with any registration business; or

¹See notification No. 3438J., dated the 18th September, 1943, published in the *Calcutta Gazette*, dated the 23rd September 1943, Part I.

(Section 9.)

- (b) who is declared to be deemed to be a tout for the purposes of this Act by rules made under section 80G;”.

Insertion
of new
Parts
XIIIA and
XIIIB in
Act XVI of
1908.

9. After Part XIII of the Indian Registration Act, 1908, the following Parts shall be inserted, namely:—

“PART XIIIA.

Of Touts.

80A. (1) Every Registrar of a district as regards his own office and the offices subordinate thereto and every subdivisional magistrate as regards the registration offices within his own jurisdiction may frame and publish lists of persons proved to his satisfaction or to the satisfaction of any Sub-Registrar as provided in section 80B, by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(3) Where the name of any person is included in a list framed and published by a subdivisional magistrate under this section, such person may, within thirty days of the publication of the list in which his name first appears, apply in writing to the Registrar of the district for the removal of his name from such list; and the orders of the Registrar, passed after such inquiry (if any) as he considers necessary, on such application shall be final.

80B. Any Registrar of a district or subdivisional magistrate may send to any Sub-Registrar within the jurisdiction of such authority the name of any person alleged or suspected to be a tout, and request the Sub-Registrar to hold an inquiry in regard to such person; and the Sub-Registrar shall thereupon hold an inquiry into the conduct of that person and, after giving him an opportunity of showing cause as provided in sub-section (2) of section 80A, shall report to the authority who has made the request whether the person has been proved to the satisfaction of the Sub-Registrar to be a tout; and that authority may include the name of any person who has been so proved to be a tout in the list of touts framed and published by him under sub-section (1) of section 80A:

Provided that such authority shall hear any such person who, before his name has been so included, appears before him and desires to be heard.

80C. A copy of every such list shall be kept hung up in every registration office to which the same relates.

The Bengal Touts Act, 1942.

V of 1942.]

(Section 9.)

80D. A registering officer may, by general or special order, exclude from the precincts of his registration office any person whose name is included in any such list.

80E. Every person who having been excluded from the precincts of a registration office under section 80D is found within the precincts of any registration office without written permission from the registering officer shall be deemed to be acting as a tout for the purposes of section 82A :

Provided that this section shall not apply where such person is a party to a document intended for registration at such office or has been directed to appear by any process of the Registering Officer. •

80F. (1) Any registering officer may, by an order in writing, direct any person named in the order to arrest any such tout found within the precincts of the registration office. Such tout may be arrested accordingly and shall be forthwith produced before the registering officer.

Act V of
1898.

(2) If the tout admits his offence the provisions of sections 480 and 481 of the Code of Criminal Procedure, 1898, shall be applicable, so far as may be, to his detention, trial and punishment.

If the tout does not admit his offence the provisions of section 482 of the said Code shall be similarly applicable to his detention, trial and punishment.

(3) A registering officer shall be deemed to be a Civil Court for the purposes of sections 480, 481 and 482 of the said Code.

PART XIIIIB.

Of Deed-writers.

80G. (1) The Inspector-General shall have power, from time to time, to make rules consistent with this Act-
Power to Inspector-General to make rule relating to deed-writers.

- (a) prescribing the manner in which and the terms subject to which persons who write documents, outside the precincts of registration office, or who frequent the precincts of registration offices, for the purpose of writing documents, may be granted licences;
- (b) prescribing the fees (if any) to be paid for such licences; and

(Sections 10—14.)

- (c) declaring the conditions under which persons who write documents outside the precincts of registration offices without licences shall be deemed to be touts for the purposes of this Act.

(2) The rules so made shall be submitted to the Provincial Government for approval, and, after they have been approved they shall be published in the *Official Gazette* and on publication shall have effect as if enacted in this Act."

Insertion
of new
section 82A
in Act XVI
of 1908.

10. After section 82 of the Indian Registration Act, 1908, the following section shall be inserted, namely:—

82A. Whoever acts as a tout whilst his name is included in a list of touts framed and published under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

Penalty.

Amend-
ment of
section 83
of Act XVI
of 1908.

11. In sub-section (2) of section 83 of the Indian Registration Act, 1908, for the word "Offences" the words, figure and letter "Save as provided in section 80F, offences" shall be substituted.

Insertion
of new
section 31A
in Act VIII
of 1923.

12. After section 31 of the Workmen's Compensation Act, 1923, the following section shall be inserted, namely:—

VIII of
1923.

"31A. (1) The provisions of section 36 of the Legal Practitioners Act, 1879, shall, subject to the provisions of this section, be applicable, so far as may be, to the framing and publication of a list of touts, to the exclusion of touts included in the list from the precincts of the court of the Commissioner and to the arrest, detention, trial and punishment of such touts.

XVIII of
1879.

(2) A Commissioner shall, for the purposes of the said section 36, be deemed to be an authority referred to in sub-section (1) of that section.

(3) For the purposes of this section 'tout' means—

- (a) a 'tout' as defined in clause (a) of section 3 of the Legal Practitioners Act, 1879; or
- (b) a person who habitually frequents the precincts of the court of a Commissioner—
 - (i) for the purpose of procuring work as an agent under section 24, or
 - (ii) otherwise than as a party to or a witness in any proceedings before the Commissioner or as a *bona fide* agent appointed under section 24."

13. [Amendment of section 4 of Bengal Act V of 1919.—Incorporated in the original Act.]

14. [Amendment of section 97 of Bengal Act V of 1919.—Incorporated in the original Act.]

V of 1942.]

(Sections 15—19.)

15. *[Insertion of New sections 98A to 98F in Bengal Act V of 1919.—Incorporated in the original Act.]*

16. *[Insertion of New section 43A in Bengal Act XIII of 1934.—Incorporated in the original Act.]*

17. *[Amendment of section 2 of Bengal Act VII of 1936.—Incorporated in the original Act.]*

18. *[Amendment of section 46 of Bengal Act VII of 1936.—Incorporated in the original Act.]*

19. *[Insertion of New sections 46A to 46F in Bengal Act VII of 1936.—Incorporated in the original Act.]*

Bengal Act VI of 1942¹

THE WORKMEN'S COMPENSATION (BENGAL AMENDMENT) ACT, 1942.

[19th November, 1942.]

An Act further to amend the Workmen's Compensation Act, 1923.

VIII of
1923.

WHEREAS it is expedient further to amend the Workmen's Compensation Act, 1923, in its application to Bengal, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Workmen's Compensation (Bengal Amendment) Act, 1942. Short title and extent.
(2) It extends to the whole of ²[West Bengal].
2. The Workmen's Compensation Act, 1923, hereinafter referred to as the said Act, shall, in its application to ²[West Bengal], be amended for the purposes and in the manner hereinafter provided. Application of Act.
3. After clause (f) of sub-section (1) of section 2 of the said Act the following clause shall be inserted, namely:— Amendment of section 2 of Act VIII of 1923.
“(ff) ‘medical referee’ means a qualified medical practitioner appointed under section 24A as a medical referee for the purposes of this Act;”.
4. After section 24 of the said Act the following sections shall be inserted, namely:— Insertion of new sections 24A and 24B.
“24A. (1) If any question arises in any proceedings ^{Reference of disputed medical questions to a medical referee.} under this Act pending before the Commissioner as to—

- (a) the nature and extent of the permanent disablement of a workman, or
- (b) the duration of his temporary disablement, or
- (c) whether the incapacity of a workman is due to personal injury by accident, or
- (d) whether a workman has contracted any occupational disease specified in Schedule III,

the question shall, in default of agreement, on the joint application of both parties or on the application of either party in the prescribed manner; and on payment in the

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 6th March, 1941; the Report of the Select Committee was presented to the Council on the 22nd August, 1941; for the proceedings of the Council, see the proceedings of the meeting of the Bengal Legislative Council held on the 28th July, 12, 22nd and 28th August, 1941; for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 28th September, 1942.

²See footnote 2 on page 1, *ante*.

(Section 4.)

prescribed manner by the parties, or the party making the application, as the case may be, of the prescribed fees and expenses, be referred by the Commissioner to a medical referee appointed by him in his descretion from amongst the medical practitioners included in the list prepared under section 24B :

Provided that where an application is made by only one of the parties, if the Commissioner is of the opinion that the question is one which ought not on account of the exceptional difficulty of the case or for any other sufficient reason be referred to a medical referee, he may after recording his reasons in writing reject the application :

Provided further that if the parties themselves jointly select any medical practitioner included in the said list for appointment as the medical referee, the Commissioner shall, on payment of the prescribed fees and expenses in the prescribed manner, appoint that medical practitioner :

Provided further that a medical practitioner whose services have been used for the medical treatment of an injury by accident to a workman, or of an occupational disease specified in Schedule III contracted by such workman, by or on behalf of such workman or his employer or by or on behalf of any insurers interested in any proceeding under this Act arising out of such injury or disease, shall not act as a medical referee in any proceedings under this Act in respect of such injury or disease.

(2) The medical referee to whom such a reference is made under sub-section (1) shall, in accordance with the prescribed rules, require the workman to submit to a medical examination by him or under his personal direction and shall personally or with such medical assistance as he may deem necessary examine the workman medically and send to the Commissioner who has made the reference a report in respect of the question specifically mentioned in the order of reference.

(3) If a workman refuses to submit himself for medical examination by or under the personal direction of the medical referee to whom a reference has been made under this section, or if a workman in any way obstructs the medical examination by or under the personal direction of the medical referee the workman's right to compensation under this Act and his right to continue any proceedings under this Act shall be suspended until such examination has taken place.

(4) In any proceedings under this Act in which evidence is recorded, the report of the medical referee shall as between the parties to the proceedings be conclusive proof of the facts related therein within the meaning of section 4 of the Indian Evidence Act, 1872 :

I of 1872.

Provided that such report shall not so be regarded as conclusive proof of the facts related therein if in the particular proceedings the Commissioner, either of his own motion or on application being made to him by either party, for reasons

*The Workmen's Compensation (Bengal Amendment) 229
Act, 1942.*

VI of 1942.]

(Section 5.)

to be recorded by him in writing, deems it expedient in the interests of justice to allow the parties to adduce further evidence on such facts.

24B. The Provincial Government shall prepare a list of ^{List of qualified medi-} qualified medical practitioners who ^{cal practitioners for} may be appointed as medical referees ^{appointment as medical} under section 24A and shall publish ^{referees.} the said list in the *Official Gazette*."

5. After clause (f) of sub-section (2) of section 32 of the said Act the following clauses shall be inserted, namely:-- Amend-
ment of
section 32.

"(ff) for prescribing the procedure relating to the reference of medical questions to medical referees under sub-section (1) of section 24A;

(ff1) for regulating the procedure relating to the medical examination of a workman by or under the personal direction of a medical referee and the submission of the report of such medical referee, under sub-section (2) of section 24A;

(ff2) for prescribing and determining the fees and expenses payable in connection with references of medical questions to medical referees under sub-section (1) of section 24A;"

Bengal Act VII of 1943

THE BENGAL VAGRANCY ACT, 1943.

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Bengal Act VII of 1943¹

THE BENGAL VAGRANCY ACT, 1943.

[25th October, 1943.]

An Act to provide for dealing with vagrancy in Bengal.

WHEREAS it is expedient to make provision for dealing with vagrancy in Bengal;

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Bengal Vagrancy Act, 1943. Short title, extent and commencement.

(2) It extends to the whole of [West Bengal].

(3) It shall come into force in Calcutta at once and in such other areas on such other dates as the Provincial Government may, by notification² in the *Official Gazette*, direct.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) "Board" means the Vagrancy Advisory Board established under sub-section (1) of section 3;

(2) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notifica-

Ben. Act
IV of
1866.

Be
II

Pages 233-234—

In section 2, omit clause (5) and in clause (9) omit the words "not being of European extraction".

(Omitted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

this Act;

¹For Statement of Objects and Reasons see the *Calcutta Gazette*, dated the 18th February, 1943; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 2nd March and 15th September, 1943; for the proceedings of the Bengal Legislative Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 20th, 22nd, 27th and the 28th September, 1943.

²See footnote 2 on page 1, ante.

³The Act came into force on the 25th October, 1943, in the Howrah and Bally police-stations in the district of Howrah, and in the Tollygunge, Behala, Matiabruz, Baranagar and Dum Dum police-stations in the district of 24-Parganas, vide notification No. 5686 A. R. P., dated the 23rd October, 1943, published in the *Calcutta Gazette, Extraordinary*, dated the 25th October, 1943, on page 182; and on the 7th December, 1944, in the Golabari police-station in the district of Howrah, vide notification No. 3304 A. R. P., dated the 24th/29th November, 1944, published in the *Calcutta Gazette*, dated the 7th December, 1944, Part I, page 1409.

(Chapter I.—Preliminary—Sections 3—5.)

- (7) "receiving centre" means a house or institution for the reception and temporary detention of vagrants provided by the Provincial Government or certified as such under sub-section (1) of section 12;
- (8) "Special Magistrate" means a Magistrate empowered to act as such under section 5;
- (9) "vagrant" means a person not being of European extraction found asking for alms in any public place, or wandering about or remaining in any public place in such condition or manner as makes it likely that such person exists by asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose;
- (10) "vagrants' home" means an institution provided by the Provincial Government under sub-section (1) of section 13 for the permanent detention of vagrants.

**Vagrancy
Advisory
Board.**

3. (1) The Provincial Government as soon as possible after the commencement of this Act shall establish a Board to be called the Vagrancy Advisory Board.

(2) The Board shall be constituted in the manner prescribed, subject to the condition that the number of the members of the Board shall not be less than ten.

(3) The function of the Board shall be to advise the Provincial Government on all matters relating to the control of vagrancy and in particular on the administration of this Act and for the aforementioned purposes any member of the Board may enter and inspect at any time any receiving centre or vagrants' home.

(4) The Board may, with the previous approval of the Provincial Government, make regulations to provide for,—

- (a) the times and places at which its meetings shall be held;
- (b) the issue of notices concerning such meetings; and
- (c) the conduct of business thereat.

**Appoint-
ment of
Controller
of Va-
grancy
and his
assistants.**

4. (1) For carrying out the purposes of this Act the Provincial Government may appoint a person to be Controller of Vagrancy together with such other persons to assist him as it thinks fit.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred and perform such functions as may be required by or under this Act.

**Special
Magis-
trates.**

5. For the purposes of Chapter II of this Act the Provincial Government may empower any Presidency Magistrate in Calcutta and any Magistrate of the first class elsewhere to act as a Special Magistrate.

[VII of 1943.]

(Chapter II.—Procedure—Sections 6—8.)

CHAPTER II.

Procedure.

6. Any police officer authorised in this behalf by the Commissioner of Police in Calcutta and by the District Magistrate elsewhere may require any person who is apparently a vagrant to accompany him or any other police officer to, and to appear before, a Special Magistrate.

Power to require apparent vagrant to appear before Special

7. (1) When a person is brought before a Special Magistrate under section 6, such Special Magistrate shall make a summary inquiry in the prescribed manner into the circumstances and character of such person, and if, after hearing anything which such person may wish to say he is satisfied that such person is a vagrant, he shall record a declaration to this effect and the provisions of this Act relating to vagrants shall thereupon apply to such person.

trate. Summary inquiry in respect of apparent vagrant and declaration of person to be a vagrant by Special Magistrate.

(2) If on making the summary inquiry referred to in sub-section (1) the Special Magistrate is not satisfied that the person brought before him under section 6 is a vagrant such person shall forthwith be released.

(3) A Special Magistrate recording a declaration under sub-section (1) that a person is a vagrant shall forthwith send a certified copy of such declaration to the Controller, and to the officer-in-charge of the receiving centre to which such vagrant is sent under sub-section (1) of section 8.

8. (1) When a person has been declared to be a vagrant under sub-section (1) of section 7 he shall forthwith be sent in the manner prescribed to the nearest receiving centre and there handed over to the custody of the officer-in-charge of such receiving centre, and such vagrant shall be detained in such receiving centre until he is sent therefrom to a vagrants' home under sub-section (1) of section 9.

Detention in receiving centre and medical examination of vagrant.

(2) As soon as possible after the commencement of the detention of a vagrant in a receiving centre the medical officer of such receiving centre shall with such medical help as may be necessary medically examine the vagrant in the manner prescribed as quickly as is consistent with the circumstances of the case and shall thereupon furnish the officer-in-charge of the receiving centre with a medical report regarding the health and bodily condition of the vagrant.

(3) The medical report referred to in sub-section (2) shall state *inter alia*,—

- (a) the sex and age of the vagrant;
- (b) whether the vagrant is a leper;
- (c) from what, if any, communicable diseases other than leprosy the vagrant is suffering;
- (d) whether the vagrant is insane or mentally deficient;
- (e) what is the general state of health and bodily condition of the vagrant and for which, if any, of the prescribed types of work he is fit.

(Chapter II.—Procedure—Sections 9, 10.)

Procedure
for
sending
vagrant
to vag-
rants'
home.

9. (1) On receipt of the medical report referred to in sub-section (2) of section 8 the officer-in-charge of a receiving centre shall, as soon as the necessary arrangements can be made, send the vagrant in the prescribed manner to such vagrants' home as the Controller may by general or special order in this behalf direct, and the said officer-in-charge shall along with such vagrant send to the Manager of the said vagrants' home,—

(a) the certified copy of the declaration made under sub-section (1) of section 7 relating to such vagrant which is to be sent to such officer-in-charge under sub-section (3) of the said section, and

(b) the said medical report.

(2) When a vagrant is sent to a vagrants' home under the provisions of sub-section (1) he shall be handed over to the custody of the Manager of such vagrants' home and shall be detained therein, or in a vagrants' home to which he may be transferred under section 16, until duly discharged therefrom under section 18.

(3) In issuing any order under sub-section (1) the Controller shall ensure that the following classes of vagrants, namely:—

(a) lepers,

(b) the insane or mentally deficient,

(c) those suffering from communicable diseases other than leprosy,

(d) children,

are segregated from each other and from vagrants who do not belong to any of the aforementioned classes and shall also ensure that the male vagrants are segregated from the female vagrants:

Provided that the provisions of this sub-section in respect of children may be relaxed as prescribed.

Extern-
ment of
vagrant
from area
in which
the Act is
in force.

10. (1) If after an inquiry made under sub-section (1) of section 7 the Special Magistrate is satisfied that the person brought before him under section 6 is a vagrant but, in the course of such inquiry, it has appeared that the vagrant was not born in the area in which this Act is in force or has not been continuously resident therein for more than one year, the Special Magistrate, after making such further inquiry, if any, as he may deem necessary, may by order in writing direct the said vagrant to leave the said area within such time and by such route or routes as may be stated in the order and not to return thereto without the permission in writing of the Controller, and in such case, notwithstanding anything contained in sub-section (1) of section 7, the provisions of sections 8 and 9 shall not apply to such vagrant:

Provided that if the Special Magistrate deems it necessary to make any further inquiry as aforesaid in respect of such vagrant, the vagrant shall be detained pending conclusion

VII of 1943.]

(Chapter II.—Procedure—Section 11—Chapter III.—
Receiving centres and vagrants' home—Section 12.)

of the said inquiry in such receiving centre as the Controller may by general or special order in this behalf direct and for this purpose shall be sent thereto in the manner prescribed and there handed over to the custody of the officer-in-charge of such receiving centre, and shall, while he is so detained, be subject to the rules of management and discipline referred to in sub-section (1) of section 15.

(2) The Controller shall not give the permission referred to in sub-section (1) unless, if the vagrant had been detained in a vagrants' home, such vagrant would have been eligible to have been discharged therefrom under the provisions of sub-section (1) of section 18.

(3) When a vagrant against whom an order has been made under sub-section (1) fails to comply with such order within the time specified therein, or after complying with the said order returns without the permission in writing of the Controller to any place within the area referred to in the said order, such vagrant may be arrested without a warrant by any police officer, and shall be liable, on conviction before a Magistrate, to be punished with rigorous imprisonment for a term which may extend to six months.

11. A declaration that a person is a vagrant recorded by a Special Magistrate under sub-section (1) of section 7 shall be sufficient authority to any person to retain such vagrant in his custody when such person is under the provisions of this Act or of any rule made thereunder conveying a vagrant from the Court of a Special Magistrate to a receiving centre or, from a receiving centre to a vagrants' home or from one vagrants' home to another and to the officer-in-charge of a receiving centre and to the Manager of a vagrants' home for detaining such vagrant in accordance with the provisions of this Act in a receiving centre or vagrants' home, as the case may be.

Validity
of custody
and deten-
tion of
vagrant.

CHAPTER III.

Receiving centres and vagrants' home.

12. (1) The Provincial Government may provide and maintain together with the necessary furniture and establishment one or more receiving centres at such place or places as it thinks fit, or may certify by notification in the *Official Gazette* any existing charitable or other institution, subject to the prior consent of the controlling authority of such institution and on such conditions as may be mutually agreed upon between the Provincial Government and the said authority, to be a receiving centre for the purposes of this Act.

Provision
of re-
ceiving
centres.

(2) For the purposes of this Act every receiving centre shall be under the immediate control of an officer-in-charge who shall be appointed by the Provincial Government and who shall perform his functions subject to the orders of the Controller.

(Chapter III.—Receiving centres and vagrants' home.—
Sections 13—16.)

(3) The Provincial Government shall also appoint for every receiving centre one or more suitable qualified persons as medical officers.

Provision
of va-
grants'
homes.

13. (1) The Provincial Government may provide and maintain together with the necessary furniture, equipment and establishment, one or more vagrants' homes at such place or places as it thinks fit and such vagrants' homes may include provision for the teaching of agricultural, industrial or other pursuits and for the general education and medical care of the inmates.

(2) Every such vagrants' home shall be under the immediate charge of a Manager who shall be appointed by the Provincial Government and who shall perform his functions subject to the orders of the Controller.

(3) The Provincial Government may appoint in respect of a vagrants' home a suitably qualified person as medical officer and one or more suitably qualified persons as teachers.

Search of
vagrants.

14. Every officer-in-charge of a receiving centre or Manager of a vagrants' home may order that any vagrant detained in such receiving centre or vagrants' home shall be searched and that the personal effects of such vagrant shall be inspected and any money then found with or on the vagrant shall be applied in the manner prescribed towards the welfare of vagrants and any of such effects other than money may be sold in auction and the proceeds of the sale shall be applied as aforesaid:

Provided that a female vagrant shall be searched by a female only and with due regard to decency.

Manage-
ment and
discipline.

15. (1) Vagrants detained in receiving centres or vagrants' homes under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed.

Explanation.—Discipline includes the enforcement of the doing of manual or other work by a vagrant.

(2) If any vagrant wilfully disobeys or neglects to comply with any rule referred to in sub-section (1) he shall on conviction before a Magistrate be liable to be punished with rigorous imprisonment for a term which may extend to three months.

(3) The Provincial Government may authorise the Manager of vagrants' home to punish any vagrant detained in such vagrants' home who wilfully disobeys or neglects to comply with any rule referred to in sub-section (1) with hard labour of the type prescribed for any period not exceeding seven days; and such punishment may be in lieu of or in addition to any punishment to which the vagrant may be liable under sub-section (2).

Transfer
of vag-
rants
from
one vag-
rants'
home to
another.

16. The Controller may by order in writing direct the transfer of a vagrant from one vagrants' home to another and a vagrant in respect of whom such an order is passed shall thereupon be sent in the manner prescribed to, and handed over to the custody of, the Manager of the vagrants' home to which he has by such order been transferred.

vii of 1943.]

(Chapter III.—Receiving centres and vagrants' home—Sections 17, 18—Chapter IV.—Penalties and Miscellaneous—Sections 19, 20.)

17. The Manager of a vagrants' home shall use his best endeavours to obtain outside the vagrants' home suitable employment for vagrants detained therein.

Outside employment to be obtained for vagrants when possible.

18. (1) A vagrant may be discharged from a vagrants' home under orders of the Controller,—

Discharge of vagrants from vagrants' home.

- (a) on the Manager of such vagrants' home certifying in the prescribed manner that satisfactory employment has been obtained for such vagrant;
- (b) on its being shown to the satisfaction of the Controller that such vagrant has become possessed of an income sufficient to enable him to support himself without resorting to vagrancy;
- (c) on a relative of such vagrant, or a person who the Controller is satisfied is interested in the welfare of such vagrant, entering into a bond with or without sureties for a sum prescribed, to look after and maintain such vagrant and to prevent him from resorting to vagrancy;
- (d) for other good and sufficient reasons to be recorded by the Controller in writing.

(2) When the employment referred to in clause (a) of sub-section (1) has been obtained for a vagrant, any such vagrant refusing or neglecting to avail himself thereof shall be liable to be punished on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to one month.

CHAPTER IV.

Penalties and Miscellaneous.

19. Whoever employs or causes any person to ask for alms, or abets the employment or the causing of a person to ask for alms, or whoever, having the custody, charge, or care of a child, connives at or encourages the employment or the causing of a child to ask for alms shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to two years or with fine or with both.

Punishment for employing or causing persons to ask for alms.

20. Any person refusing or failing to accompany a police officer to, or to appear before a Special Magistrate, when required by such officer under section 6 to do so, may be arrested without warrant, and shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to one month or with fine, or with both.

Punishment for refusing to go before a Special Magistrate.

(Chapter IV.—Penalties and Miscellaneous.—
Sections 21—27.)

Punish-
ment for
refusing
to submit
to medical
examina-
tion at
receiving
centre.

21. Any vagrant who refuses to submit to a medical examination by the medical officer of a receiving centre or by any person assisting such medical officer under the provisions of sub-section (2) of section 8 shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to one month.

Punish-
ment for
escape
from re-
ceiving
centre or
vagrants'
home.

22. Any vagrant who escapes from any custody to which he has been committed under this Act or any rule made thereunder or who leaves a receiving centre without the permission of the officer-in-charge thereof, or who leaves a vagrants' home without the permission of the Manager thereof, or who, having with the permission of such officer-in-charge or Manager, as the case may be, left a receiving centre or a vagrants' home for a time specified under any rule referred to in sub-section (1) of section 15 wilfully fails to return on the expiration of such time, may be arrested without warrant and shall for every such offence, be liable to be punished, on conviction before a Magistrate with rigorous imprisonment for a term which may extend to six months.

Procedure
at end
of impri-
sonment.

23. Every person imprisoned under the provisions of sub-section (2) of section 15, sub-section (2) of section 18, section 20, section 21 or section 22 shall at the end of his term of imprisonment be brought under police custody before the nearest Special Magistrate who shall forthwith deal with such person in the manner laid down in sections 7, 8 and 9 as if such person had been brought before such Special Magistrate under the provisions of section 6:

Provided that if the said Special Magistrate is of the opinion that such person would, if detained under this Act as a vagrant in a vagrants' home, be eligible to be discharged therefrom under the provisions of sub-section (1) of section 18, he may, instead of dealing with such person as aforesaid, direct that such person be released and such person shall thereupon be set at liberty.

Prosecu-
tion and
juris-
diction
to try
offenders.

24. (1) No prosecution for an offence under this Act may be commenced except by, or with the permission of such officer as may be prescribed in this behalf.

(2) No offence under this Act shall be triable by any Magistrate other than a Presidency Magistrate or a Magistrate of the first class.

Persons
to be
deemed
public
servants.

Indem-
nity.

25. All persons empowered to perform any function under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

26. No suit, prosecution or other legal proceeding shall lie against any person empowered to perform any function under this Act for anything which is in good faith done or intended to be done under this Act.

27. [Repeal—Repealed by West Bengal Act VII of 1948.]

(Chapter IV.—Penalties and Miscellaneous.—Section 28.)

28. (1) The Provincial Government may make rules¹ for carrying out the purposes of this Act.

Power to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the purposes for which a person may collect money or ask for food or gifts referred to in clause (9) of section 2;
- (b) the constitution of the Board referred to in sub-section (2) of section 3;
- (c) the manner in which the summary inquiry referred to in sub-section (1) of section 7 shall be made;
- (d) the manner in which a vagrant is to be sent to a receiving centre under sub-section (1) of section 8 and the proviso to sub-section (1) of section 10;
- (e) the manner in which a medical officer is medically to examine a vagrant under sub-section (2) of section 8;
- (f) the types of works for which a vagrant may be reported fit under clause (c) of sub-section (3) of section 8;
- (g) the manner in which a vagrant is to be sent to a 'vagrants' home under sub-section (1) of section 9;
- (h) the manner in and the extent to which the provisions of sub-section (3) of section 9 in respect of children may be relaxed;
- (i) the manner in which the money found with or on, or the proceeds of the sale of other personal effects of, a vagrant may be applied to the welfare of vagrants under section 14;
- (j) the management and discipline referred to in sub-section (1) of section 15 to which vagrants detained in receiving centres and vagrants' homes shall be subject;
- (k) the type of the hard labour which is to form the punishment which may be awarded under sub-section (3) of section 15;
- (l) the manner in which a vagrant may be sent from one vagrants' home to another under section 16;
- (m) the manner in which the Manager of a vagrants' home is to certify under clause (a) of sub-section (1) of section 18 that satisfactory employment has been obtained for a vagrant;
- (n) the amount of the bond referred to in clause (c) of sub-section (1) of section 18;
- (o) the officer referred to in sub-section (1) of section 24.

¹For rules under this Act see the Bengal Statutory Rules and Orders.

(Chapter IV.—Penalties and Miscellaneous.—Section 29.)

Continu-
ance of
action
taken
under
Bengal
Ordinance
II of
1943.

29. Any rules made or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the Bengal Vagrancy Ordinance, 1943, shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 30th day of July, 1943.

Bengal Act III of 1944¹

THE BENGAL ORPHANAGES AND WIDOWS' HOMES ACT, 1944.

[29th June, 1944.]

An Act to provide for the better control and supervision of orphanages, widows' homes and marriage bureaux, in Bengal.

WHEREAS it is expedient to provide for the better control and supervision of orphanages, widows' homes and marriage bureaux, in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Orphanages and Widows' Homes Act, 1944. Short title, extent and commencement.
(2) It extends to the whole of ²[West Bengal].
(3) It shall come into force in such areas on such dates as the Provincial Government may, by notification in the *Official Gazette*, direct.
2. In this Act, unless there is anything repugnant in the subject or context,—
(1) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866;
(2) "marriage bureau" means an institution, by whatever name it may be called, which negotiates the marriages of persons and includes a place where females of any age are kept or intended to be kept by such institution for the said purpose;
(3) "orphan" means a boy or girl under eighteen years of age who has lost his or her father or has been abandoned by his or her parents or guardians;
(4) "orphanage" means an institution, by whatever name it may be called, where orphans are kept or intended to be kept;
(5) "prescribed" means prescribed by rules made under this Act;
(6) "widow" includes a woman abandoned by her husband;

Ben. Act
IV of 1866.

Ben. Act
II of 1866.

Definitions.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 26th September, 1940; the Report of the Select Committee was presented to the Assembly on the 3rd March, 1944; for the proceedings of the Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 13th September and 4th December, 1940, 4th April, 20th August, 1941, 23rd September, 1943, and 3rd March, 1944; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council, held on the 20th March, 21st April and 12th May, 1944.

²See footnote 2 on page 1, ante.

(Sections 3—5.)

- (7) "widows' home" means an institution, by whatever name it may be called, where widows or females of any age are kept or intended to be kept;

Act not to apply to certain institutions.

3. Nothing in this Act shall apply to—

- (a) a reformatory school, an industrial school or an auxiliary home established or certified by the Provincial Government under the Bengal Children Act, 1922;
- (b) any institution recognised as a place of suitable custody under sub-section (1) of section 28 of the Bengal Children Act, 1922, or under any rule made under clause (b) of sub-section (2) of section 27 of the Bengal Suppression of Immoral Traffic Act, 1933; or
- (c) any orphanage or widows' home established and maintained by the Provincial Government.

Ben. Act II of 1922.

Ben. Act VI of 1933.

Prohibition to open or to carry on an orphanage, a widows' home or a marriage bureau without a licence.

4. No person shall without, or otherwise than in conformity with the conditions of, a licence granted under this Act in the prescribed form open or carry on an orphanage, a widows' home or a marriage bureau:

Provided that a person carrying on any such institution at the commencement of this Act shall be allowed a period of six months from such commencement to obtain such licence.

Licence to open or to carry on an orphanage, a widows' home or a marriage bureau.

5. (1) Subject to the provisions of sub-section (2) the Commissioner of Police in Calcutta and elsewhere the District Magistrate may, on receipt of an application in the prescribed form containing the prescribed particulars, grant to any person a licence for the opening and carrying on or the carrying on of an orphanage, a widows' home or a marriage bureau (hereinafter referred to as the said institution) on such conditions as may be prescribed in this behalf.

(2) The Commissioner of Police or the District Magistrate, as the case may be, shall refuse to grant a licence under sub-section (1) unless he is satisfied—

- (a) that for the control and supervision of the said institution a society has, subject to such rules as may be made in this behalf by the Provincial Government, been formed and registered under the Societies Registration Act, 1860, the provisions of which shall, notwithstanding anything to the contrary contained in that Act, apply to every such institution as if such institution is a charitable society;
- (b) that the members of the society are respectable persons of the town or district where the said institution is or is to be located;
- (c) that the said institution is or is to be located in a healthy locality and the accommodation therein is sufficient for the purpose for which it is to be opened or is being carried on.

XXI of 1860.

of 1943.]

(Sections 6—11.)

6. A licence granted under section 5 may be suspended or cancelled by the authority which granted it—

(a) if there is any contravention of any of the provisions of this Act or any breach of the conditions subject to which the licence was granted, or

(b) if the institution in respect of which the licence was granted has ceased to fulfil the conditions specified in clauses (a) to (c) of sub-section (2) of section 5.

Suspension or cancellation of licence.

7. The Commissioner of Police or the District Magistrate, or any Deputy Commissioner of Police authorised in writing in this behalf by the Commissioner of Police or any Magistrate authorised in writing in this behalf by the District Magistrate or any person not in the service of the Crown when authorised in writing in this behalf in Calcutta by the Commissioner of Police or elsewhere by the District Magistrate may enter and inspect any orphanage, widows' home or marriage bureau at any time by day or night and the society having control of such institution and the persons in charge thereof shall not refuse such entry or inspection.

Inspection of the institution.

8. Whoever acts in contravention of any of the provisions of this Act shall on conviction be punished with fine which may extend to five hundred rupees, and in the case where the contravention is a continuing one with further fine which may extend to fifty rupees for every day after the first during which such contravention continues subsequent to such conviction.

Penalty.

9. No prosecution under this Act shall be instituted except with the previous sanction of the Commissioner of Police in Calcutta and the District Magistrate elsewhere.

Prosecution.

10. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

Jurisdiction.

11. (1) The Provincial Government may subject to the condition of previous publication make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely:—

- (a) the form of licence to be granted under his Act;
- (b) the form of application for licence under sub-section (1) of section 5 and the particulars to be contained in such application;
- (c) the conditions subject to which licences may be granted; and
- (d) the formation of a society for the control and supervision of an orphanage, a widows' home or a marriage bureau under clause (a) of sub-section (2) of section 5.

Bengal Act IV of 1944

THE BENGAL AGRICULTURAL INCOME-TAX ACT, 1944.

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THE SCHEDULE.

Bengal Act IV of 1944¹

THE BENGAL AGRICULTURAL INCOME-TAX ACT, 1944.

[30th December, 1944.]

An Act to provide for the imposition of a tax on agricultural income derived from land situated in Bengal.

WHEREAS it is necessary to make an addition to the revenues of Bengal, and for that purpose to impose a tax on agricultural income derived from land situated in Bengal;

Preliminary.

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Agricultural Income-tax Act, 1944. Short title,
extent and
commence-
ment.
- (2) It extends to the whole of ²[West Bengal].
- (3) It shall be deemed to have come into force on the

Pages 249-252—

In section 2—

- (a) In sub-clause (a) of clause (1) omit the words "of India".
- (b) In clause (6) after the words "Act of Parliament" insert the words "of the United Kingdom" and omit the words "a Province of".
- (c) In clause (9) for the words "a company and the Ruler of an Indian State" substitute the words "and a company".
- (d) Omit clause (15).
- (Omitted, inserted and substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

¹For Statement of Objects and Reasons see the *Calcutta Gazette, Extraordinary*, dated the 2nd September, 1942; the Report of the Select Committee was presented to the Assembly on the 1st February, 1944; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly, held on the 15th and the 16th September, 1943, 1st, 10th, 14th, 15th, 16th and 17th February, 3rd, 4th, 6th, 18th, 19th, 20th, 24th, 25th, 26th and 27th April, 1944; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 17th, 23rd, 24th, 25th and 29th May, 12th, 13th, 20th and 23rd June, 4th, 5th, 6th, 10th, 11th, 12th, 13th, 17th, 18th, 19th, 25th, 27th and 31st July, 1st, 2nd, 3rd, 8th, 9th, 10th, 15th, 16th and 17th August, 5th, 9th, 10th, 11th, 12th, 23rd and 24th October, 1944.

²See footnote 2 on page 1, *ante*.

³These words within square brackets were substituted for the words "British India" by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Section 2.)

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in item (ii);

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind of any land with respect to which, or the produce of which, any operation mentioned in items (ii) and (iii) of sub-clause (b) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as dwelling house, or as a store house or other out-building;

(2) "Agricultural Income-tax Officer" means a person appointed to be an Agricultural Income-tax Officer under section 21;

(3) "assessee" means a person by whom agricultural income-tax is payable;

(4) "Assistant Commissioner" means the person appointed as Assistant Commissioner of Agricultural Income-tax under section 21;

(5) "Commissioner" means the person appointed to be the Commissioner of Agricultural Income-tax, ¹[West Bengal], under section 21;

(6) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent or of an Act of the Legislature of a British possession or under a law of an Indian State, and includes any foreign association carrying on business in ²[a Province of India] or owning or possessing any interest in land in ¹[West Bengal] whether such association is incorporated or not, and whether its principal place of business is situated in ²[a Province of India] or not, which the Provincial Government may, by general or special order, declare to be a company for the purposes of this Act;

VII of
1913.

(7) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932, provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership;

IX of 1932

¹See footnote 2 on p. 1, *ante*.

²See footnote 3 on p. 249, *ante*.

(Section 2.)

- (8) "Hindu undivided family" means a Hindu undivided family governed by *mitakshara* law;
- (9) "person" includes a Hindu undivided family, a firm, a company and the Ruler of an Indian State;
- (10) "prescribed" means prescribed by rules made under this Act;
- (11) "previous year" means—
- (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have been so made up;
 - (b) such period as may be determined by the Commissioner in the particular case of any person or class of persons;
 - (c) in the case of income which is partially agricultural income from land and partially income chargeable under the Indian Income-tax Act, 1922, under the head "Business", and the business concerned has been newly set up in the financial year preceding the year for which the assessment is to be made, the period from the date of the setting up of such business to the 31st day of March next following, or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Commissioner under sub-clause (b), then at the option of the assessee, the period from the date of the setting up of such business to such other date:

Provided that when such other date does not fall between the setting up of such business and the next following 31st day of March it shall be deemed that there is no previous year:

Provided further that where in this clause an option is exercisable by the assessee it shall not be exercisable more than once except with the consent of the Agricultural Income-tax Officer and upon such conditions as such officer may think fit:

Provided further that where in this clause an option is exercisable by the assessee and he has been assessed after he has exercised such option it shall not be exercisable by him again so as to

(Section 2.)

vary the meaning of the expression "previous year" as then applicable except with the consent of the Agricultural Income-tax Officer:

Provided also that where the assessee is a partner in a firm, the expression "previous year" in respect of his share of the agricultural income of the firm means the previous year as determined for the assessment of the agricultural income of the firm;

(12) "principal officer" used with reference to an Indian State, a company or any other association means—

(a) (i) the manager or agent in ¹[West Bengal] of the Ruler of the Indian State, or

(ii) the secretary, treasurer, manager or agent of the company or association; or

(b) any individual connected with the Indian State, company or association upon whom an Agricultural Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) "public servant" has the same meaning as in the Indian Penal Code;

Act XLV
of 1860.

(14) "received" used with reference to the receipt of the agricultural income by a person shall include—

(1) receipt by an agent or servant on behalf of a principal or master respectively,

(2) receipts by other persons which are deemed to be his receipts under the provisions of this Act, and shall also include receipts of agricultural income by way of adjustment of accounts with any other person;

(15) "Ruler of an Indian State" means the Ruler of such State in his public and official capacity;

(16) "total agricultural income" means the total amount of agricultural income referred to in section 4 and computed in the manner laid down in this Act;

(17) "total world income" means the sum of—

(a) the total world income as defined in the Indian Income-tax Act, 1922, and

XI of 1922

(b) the total agricultural income as defined in this Act, and

(c) the agricultural income as derived from land in ²[any Province of India other than West Bengal]; and

¹See footnote 2 on page 1, *ante*.

²These words within square brackets were substituted for the words "British India excepting Bengal" by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

IV of 1944.]

(Chapter I.—Chapter II.—Computation of agricultural income-tax and allowances.—Sections 3–5.)

- (18) “written down value” means in respect of any irrigation or protective work, or any machinery, plant or other capital asset,—
- (a) in the case of assets acquired in the previous year, the actual cost to the assessee,
 - (b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation allowable to him under this Act in respect of such work, machinery, plant or other asset as the case may be.

CHAPTER I.

3. Agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of this Act, at the rate or rates specified in the Schedule in respect of the total agricultural income of the previous year of every individual, Hindu undivided family, company, firm or other association of individuals and every Ruler of an Indian State:

Charge of agricultural income-tax.

Provided that agricultural income-tax shall not be charged on the agricultural income of the Central Government or any Provincial Government or any local authority.

4. Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within ¹[West Bengal] and received by him within or without ¹[West Bengal], including any Local Cess and Education Cess payable in respect of such land to such person under the Cess Act, 1880, and the Bengal (Rural) Primary Education Act, 1930, respectively, but does not include—

Total agricultural income.

- (a) any agricultural income derived from land situated without ¹[West Bengal],
- (b) any agricultural income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes or in the case of Muslim trusts commonly known as *Wakf-al-al-aulads*, the income applied thereto.

Explanation.—In this section “charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

CHAPTER II.

Computation of agricultural income-tax and allowances.

5. Save as otherwise provided by this Act, the following heads of agricultural income shall be chargeable to agricultural income-tax, namely:—

Heads of charge to agricultural income-tax.

- (i) agricultural income as defined in sub-clause (a) of clause (1) of section 2 (hereinafter referred to as “agricultural income from rent or revenue”);

¹See footnote 2 on page 1, ante.

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 6.)

- (ii) agricultural income as defined in sub-clause (b) of clause (1) of section 2 (hereinafter referred to as “agricultural income from agriculture”),

in the manner hereinafter appearing.

Computation of tax and allowances under the head, Agricultural income from rent or revenue.

6. Agricultural income-tax shall be payable by an assessee under the head “Agricultural income from rent or revenue” in respect of all rent and revenue, including any Local Cess or Education Cess referred to in section 4 derived from land referred to in sub-clause (a) of clause (1) of section 2 included in his total agricultural income and received in the previous year, subject to the following allowances, namely:—

- (1) any sums paid by him in the previous year on account of—
 - (i) land revenue, or rent,
 - (ii) any local rate or cess including Education Cess in respect of such land;
- (2) where his interest in such land is subject to a mortgage or other capital charge, the amount of any interest paid by him in the previous year in respect of such mortgage or charge, and where such land has been acquired, reclaimed or improved by him by the use of borrowed capital, the amount of any interest paid by him in the previous year in respect of such capital:

Provided that the interest allowable under this clause shall not exceed the interest which the assessee is liable to pay in respect of such mortgage, charge or capital as a borrower under section 30 of the Bengal Money-lenders Act, 1940;

- (3) any sum paid by him in the previous year as interest on any loans taken by him under the Agriculturists’ Loans Act, 1884, or the Land Improvement Loans Act, 1883, in respect of such land;
- (4) in respect of the maintenance of any irrigation or protective work or other capital asset the amount paid in the previous year on account thereof.

Ben. Act
X of 1940.

XII of
1884.
XIX of
1883.

Explanation.—“Maintenance” includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood, or other natural causes;

- (5) depreciation at the prescribed rate in respect of any irrigation or protective work or other capital asset, constructed or acquired after the commencement of this Act for the benefit of the land from which such agricultural income is derived or for the purpose of deriving such agricultural income from such land;

[IV of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 6.)

- (6) any sum paid by him in the previous year as premium in order to effect any insurance against loss of or damage to such land or any crops to be raised or cattle to be reared thereon;
- (7) in respect of the cost of collection of such rent or revenue including the cost of maintenance of any *katchari* or other capital assets and any expenses of litigation, a sum equal to fifteen *per centum* of the total amount of rent or revenue which accrued to him in the previous year in respect of the land from which such rent or revenue is derived:

Provided that in the case of an assessee who can produce his accounts audited and certified to the correct by an accountant, and at the option of such assessee recorded in writing the allowance shall be instead of such sum the actual cost of collection incurred during the previous year as determined by the Agricultural Income-tax Officer on the basis of such accounts, subject to a maximum equal to twenty *per centum* of the total amount of rent or revenue which accrued to him in the previous year in respect of the land from which such rent or revenue is derived.

Explanation.—“Accountant” in this proviso has the same meaning as in clause (iii) of sub-section (2) of section 58 and includes the Accountant-General, [West Bengal], and any person auditing accounts under his direction and control:

Provided further that the assessee, having once exercised the option to claim the actual cost on the basis of his accounts as the allowance admissible as aforesaid, shall not be entitled in any future year to claim instead the alternative allowance admissible except with the previous sanction of the Assistant Commissioner;

- (8) in the assessment made for each of the three financial years ending on the 31st March, 1945, the 31st March, 1946, the 31st March, 1947, respectively, in respect of the cost of collection of such rent or revenue and in addition to the allowance specified in clause (7), if the total amount of the rent or revenue received by the assessee in the previous year exceeds the total amount of rent or revenue which accrued to such assessee in the previous year by more than five *per centum* of such amount accrued, a sum equal to one-fifth of the amount by which such amount received exceeds such amount accrued;

- (9) when rent derived from such land is rent-in-kind the cost incurred by the assessee—

- (i) in performing any process contemplated in item (ii) of sub-clause (b) of clause (1) of section 2 for rendering the produce which comprises such rent-in-kind fit to be taken to market;

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 7.)

- (ii) in transporting such produce to market;
- (iii) in maintaining in good repair any agricultural implements or machinery and in providing for the upkeep of cattle for the purposes of such process or transport;
- (10) any other expenditure of the assessee, not being in the nature of capital expenditure or personal expenditure, laid out wholly and exclusively for the purpose of deriving such agricultural income from such land.

Computation of tax and allowances under the head Agricultural income from agriculture.

7. Agricultural income-tax shall be payable by an assessee under the head "Agricultural income from agriculture" in respect of all agricultural income derived from land referred to in sub-clause (b) of clause (1) of section 2 included in his total agricultural income and received by him in the previous year subject to the following allowances, namely:—

- (1) the cost incurred by the assessee in the previous year:—
 - (i) in cultivating such land or raising livestock thereon;
 - (ii) in performing any process contemplated in item (ii) of sub-clause (b) of clause (1) of section 2 for rendering the produce of such land fit to be taken to market;
 - (iii) in transporting such produce or livestock to market; and
 - (iv) in maintaining agricultural implements and machinery in good repair and in providing for the upkeep of cattle for the purpose of such cultivation, process, or transport:

Provided that in the case of an agricultural income derived from land possessed by an individual or a Hindu undivided family and cultivated by such individual or by the members of such family with or without the aid of servants or hired labourers or of both, the allowance admissible under this clause shall, instead of such cost, be a sum equal to fifty *per centum* of the market value of the produce raised from such land;

- (2) any sum paid by him in the previous year on account of—
 - (i) land revenue or rent;
 - (ii) any local rate or cess including Education Cess, in respect of such land;
- (3) where his interest in such land is subject to a mortgage or other capital charge, the amount of any interest paid by him in the previous year in respect of such mortgage or charge, and where

IV of 1944.]

(Chapter II.—*Computation of agricultural income-tax and allowances.*—Section 7.)

such land has been acquired, reclaimed or improved by him by the use of borrowed capital, the amount of any interest paid by him in the previous year in respect of such capital:

Provided that the interest allowable under this clause shall not exceed the interest which the assessee is liable to pay in respect of such mortgage, charge or capital as a borrower under section 30 of the Bengal Money-Lenders Act, 1940;

(4) any sum paid by him in the previous year as interest on any loans taken by him under the Agriculturists' Loans Act, 1884, or the Land Improvement Loans Act, 1883, in respect of such land;

(5) in respect of the maintenance of any irrigation or protective work or other capital assets the amount paid in the previous year on account thereof.

Explanation.—"Maintenance" includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood or other natural causes;

(6) depreciation at the prescribed rate in respect of any irrigation or protective work or other capital asset constructed or acquired after the commencement of this Act for the benefit of the land from which such agricultural income is derived or for the purpose of deriving such agricultural income from such land;

(7) any sum paid by him in the previous year as premium in order to effect any insurance against loss of or damage to such land or any crops to be raised or cattle to be reared thereon;

(8) in respect of any machinery or plant used exclusively for agricultural purposes which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value:

Provided that such amount is actually written off in the books of the assessee;

(9) any other expenditure of the assessee not being in the nature of capital expenditure or personal expenditure laid out wholly and exclusively for the purpose of deriving such agricultural income from such land;

(10) any other sum which may be prescribed.

Ben. Act
X of 1940.

XII of
1884.
XIX of
1883.

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 8.)

Computa-
tion of
tax on
mixed
incomes.

8. (1) In the case of income which is partially agricultural income assessable under this Act and partially income chargeable under the Indian Income-tax Act, 1922, under the head "Business", agricultural income-tax shall be payable by an assessee in respect of the market value determined in the manner prescribed of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business, subject to any allowances which may be permissible under the provisions of this Act: XI of 1922.

Provided that,—

- (a) where for the purposes of the assessment of income-tax under the Indian Income-tax Act, 1922, the market value of the said produce has been determined the market value as so determined shall be taken to be the market value for the purposes of this sub-section;
- (b) where there is a common charge on both agricultural income assessable under this Act and income chargeable under the Indian Income-tax Act, 1922, and such charge is an allowance permissible both under this Act and the Indian Income-tax Act, 1922, then, if for the purposes of the Indian Income-tax Act, 1922, the part of such charge which is to be deemed to be the allowance permissible under that Act has been determined under that Act, the remaining part of such charge shall be deemed to be the allowance to which agricultural income assessable under this Act is subject.

(2) Notwithstanding anything contained in this Act, in the case of tea [the plant *Camellia Thea* (Linn.)] grown in ¹[West Bengal] and sold by the grower himself or his agent after manufacture, the agricultural income derived therefrom shall, as long as for the purposes of assessment of income-tax under the Indian Income-tax Act, 1922, the income derived therefrom is computed under that Act in such manner as to include agricultural income, be deemed to be that portion of such income as so computed on which income-tax is not payable under that Act, and agricultural income-tax at the rates specified in the schedule shall be payable on the whole of such agricultural income as so computed.

Explanation.—Where such income is derived from lands partially in and partially without ¹[West Bengal], agricultural income-tax shall be levied under this Act on such portion of that income as is attributable to lands in ¹[West Bengal] according to the following principles, namely:—

- (i) where the proportion of such income attributable to lands in ¹[West Bengal] has been determined

¹See footnote 2 on p. 1, ante.

IV of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Sections 9, 10.)

for the purposes of the Indian Income-tax Act, 1922, such apportionment shall be accepted as determining for the purposes of this sub-section the proportion of such income attributable to lands in '[West Bengal];

- (ii) where the proportion of such income attributable to lands in '[West Bengal] cannot be determined

Page 259—

In sub-section (3) of section 8, for the words "His Majesty in Council" substitute the words "the Supreme Court".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

9. Where an allowance admissible under sections 6, 7 or 8 is in respect of a common payment made for the purpose of deriving agricultural income from land part of which is within and part without '[West Bengal], such allowance shall be calculated as such proportion of the common payment as the agricultural income derived from the land within '[West Bengal] bears to the agricultural income derived from all the land both within and without '[West Bengal] in respect of which such common payment is made.

Computation of allowances where estates extend beyond West Bengal.

10. Agricultural income-tax shall not, subject to the provisions of section 17, be payable on that part of the total agricultural income of a person which is—

Exemptions from assessment of tax.

- (a) any dividend which such person receives as a shareholder out of the agricultural income of a company which has paid or will pay the tax in respect of the said agricultural income or any agricultural income which he receives as his share of agricultural income of a firm or association of individuals, which has paid the tax in respect of the said agricultural income;
- (b) any sum which he receives as a member of a Hindu undivided family, the agricultural income of which has already been taxed;
- (c) any sum paid by such person—
- (i) to effect an insurance on the life of such person or on the life of a wife or husband or minor child of such person or in respect of a contract for a deferred annuity on the life of such person or on the life of a wife or husband or minor child of such person;

¹See footnote 2 on page 1, *ante*.

²From the 1st February, 1948, "His Majesty in Council" has no jurisdiction over Indian Union. See in this connection The Federal Court (Enlargement of Jurisdiction) Act, 1947 (I of 1948).

(Chapter II.—*Computation of agricultural income-tax and allowances.*—Chapter III.—*Liability to assessment in special cases.*—Sections 11—13.)

- (ii) where the assessee is a Hindu undivided family, to effect an insurance on the life of any male member of such family or of the wife or a minor child of any such member:

Provided that the aggregate of any sums exempted from assessment to agricultural income-tax under this clause shall not exceed one-sixth of the total agricultural income of the assessee.

Prevention of double relief.

11. In computing the amount of any allowance or relief from assessment due under sections 6, 7, 8 or clause (c) of section 10 no part of such allowance or relief shall be included which constitutes a ground for relief from Indian income-tax under the provisions of the Indian Income-tax Act, 1922.

XI of 1922.

Inclusions to prevent evasion of tax.

12. In computing the total agricultural income of any individual for the purpose of assessment there shall be included—

- (a) so much of the total agricultural income of a wife or minor child of such individual as arises directly or indirectly—
- (i) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart,
- (ii) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration;
- (b) so much of the total agricultural income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or minor child or both.

CHAPTER III.

Liability to assessment in special cases.

Liability of guardian, trustee, agent, receiver or administrator.

13. Where any person receives any agricultural income derived from land,

- (a) as a guardian, trustee or agent of any person being a minor, lunatic or idiot or person residing without¹ [West Bengal], interested in such land or the agricultural income derived therefrom, or
- (b) as a receiver or administrator appointed by or under the order of any Court in respect of such land or the agricultural income derived therefrom,

any agricultural income-tax payable under this Act on such income shall be levied upon and recoverable from such

¹See footnote 2 on p.1, ante.

*(Chapter III.—Liability to assessment in special cases.—
Sections 14—16.)*

guardian, trustee, agent, receiver or administrator in like manner and to the same amount as would be leviable upon and recoverable from any such person if in direct receipt of such agricultural income and such guardian, trustee, agent, receiver or administrator shall be deemed to be the assessee in respect of the agricultural income-tax so payable by such minor, lunatic, idiot, person residing without¹ [West Bengal], or other person, as the case may be, and all the provisions of this Act shall apply accordingly.

VI of
1913.

14. In the case of agricultural income chargeable to agricultural income-tax under this Act derived from land which is received by the Court of Wards, an Administrator-General or an Official Trustee or any trustee or trustees appointed under a duly executed trust deed (including the trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), or a common manager the agricultural income-tax payable under this Act on such income shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee or such other trustee or trustees or such common manager in the like manner and to the same amount as it would be leviable upon or recoverable from any person on whose behalf such agricultural income is received and all the provisions of this Act shall apply accordingly.

Liability
of Court
of Wards,
Adminis-
trator-
General
and Offi-
cial Trust-
tees, etc.

15. Where the agricultural income received on behalf of any person by any trustee, agent, receiver, Court of Wards, Official Trustee or common manager referred to in sections 13 and 14 is part only of the total agricultural income of such person, the agricultural income-tax payable under this Act shall be assessed on the total agricultural income of such person and the amount of tax as so assessed shall be, levied upon and recoverable from such trustee, agent, receiver, Court of Wards, Official Trustee or common manager and such person rateably according to the portion of the total agricultural income of such person received by such trustee, agent, receiver, Court of Wards, Official Trustee or common manager, as the case may be, and the portion received by such person.

Rateable
payment
by guard-
ian,
trustee,
etc.

16. (1) In any case falling under the provisions of sections 13 and 14 where any agricultural income or any part thereof is not specifically received on behalf of any one person, or where the individual shares of the persons on whose behalf such income is received are indeterminate or unknown, the tax shall be levied and recoverable at the rate applicable to the total amount of such income.

Residuary
provisions
for com-
putation
and reco-
very of
tax under
sections
13 and 14.

(2) Nothing contained in sections 13 and 14 shall prevent either the direct assessment of a person therein referred to on whose behalf agricultural income is received, or the recovery from such person of the agricultural income-tax payable in respect of such income.

¹See footnote 2 on p. 1, ante.

(Chapter III.—*Liability to assessment in special cases.*—
Sections 17—20.)

Tax
deemed to
be paid on
others'
behalf
by com-
panies,
firms and
associa-
tions.

17. A company, firm or other association of individuals which has paid agricultural income-tax under this Act in respect of its agricultural income as such company, firm or association shall be deemed for the purposes of section 48 to have paid agricultural income-tax on behalf of the share holders or such company, the partners of such firm or the members of such association, as the case may be, on such part of the agricultural income of every individual share-holder, partner or member as represents the portion of the agricultural income of such company, firm or association which is received by such share-holder, partner or member.

Liability
of person
deriving
agricul-
tural
income
jointly for
himself
and
others.

18. (1) Save as provided for in sections 13, 14 and 17 if a person receives agricultural income derived from land and such income is derived partly for his own benefit and partly for the benefit of beneficiaries or wholly for the benefit of beneficiaries, agricultural income-tax shall be assessed on the total agricultural income derived from such land at the rate which would be applicable if such income had been derived solely for his own benefit, and agricultural income-tax at such rate shall be leviable upon and recoverable from such person in respect of such income.

(2) Any person receiving agricultural income as referred to in sub-section (1) may, before paying to any beneficiary any share of such agricultural income to which such beneficiary is entitled, deduct from such share the amount of agricultural income-tax or its equivalent value in kind if such share is paid in kind rateably paid in respect of such share.

Explanation.—In this section “beneficiary” means a person entitled according to law to a portion of the agricultural income derived from such land.

Liability
in case of
discon-
tinued
firms or
associations.

19. Where agricultural income is received by a firm or association of individuals and the business of such firm or association is discontinued or such firm or association is dissolved every person who was a partner of such firm or member of such association at the time of such discontinuance or dissolution shall be jointly and severally liable to assessment on such agricultural income and for the amount of agricultural income-tax payable under this Act by such firm or association, and all the provisions of this Act shall, so far as may be, apply to such assessment.

Agents to
include
persons
treated as
such.

20. Any person employed by or on behalf of a person residing without ¹[West Bengal], or through whom in the course of any business connection such person is in the receipt of any agricultural income upon whom the Agricultural Income-tax Officer has caused a notice to be served of

¹See footnote 2 on p. 1. *conts.*

(Chapter III.—*Liability to assessment in special cases.*—
Chapter IV.—*Income-tax Authorities and Appellate Tribunal.*—Sections 21, 22.)

his intention of treating such person as the agent of the non-resident person, shall for the purposes of this Act be deemed to be such agent:

Provided that no person shall be deemed to be the agent of a non-resident person unless he has had an opportunity of being heard by the Agricultural Income-tax Officer as to his liability.

CHAPTER IV.

Income-tax Authorities and Appellate Tribunal.

21. (1) There shall be the following classes of agricultural income-tax authorities for the purposes of this Act, namely:—

Agricultural income-tax authorities.

- (a) the Commissioner of Agricultural Income-tax, ¹[West Bengal];
- (b) the Assistant Commissioner of Agricultural Income-tax, ¹[West Bengal];
- (c) ¹[West Bengal] Agricultural Income-tax Officers.

(2) The authorities specified in sub-section (1) shall be appointed by the Provincial Government.

(3) The Commissioner of Agricultural Income-tax, ¹[West Bengal], shall in respect of the whole of ¹[West Bengal] exercise the powers conferred and perform the duties imposed on him by this Act and by such rules as may be prescribed.

(4) The Assistant Commissioner of Agricultural Income-tax, ¹[West Bengal], shall exercise in respect of the whole of ¹[West Bengal] all the powers provided under section 34 and such powers of the Commissioner under this Act or the rules made thereunder, except the powers provided under section 37, as may be delegated to him by the Commissioner with the approval of the Provincial Government.

(5) The ¹[West Bengal] Agricultural Income-tax Officers shall, in respect of such areas as the Provincial Government may by notification determine, exercise the powers conferred and perform the duties imposed on them by this Act and by such rules as may be prescribed.

22. (1) The Provincial Government shall from time to time appoint, as and when may be necessary for the purpose of hearing appeals preferred under section 36, an Appellate Tribunal consisting of three members.

Appellate Tribunal.

(2) The Appellate Tribunal shall consist of one judicial member, one lawyer member and one accountant member as hereinafter defined,—

- (a) the judicial member shall be a person who has exercised the powers of a District Judge in ¹[West Bengal] or who possesses such qualifications as are normally required for appointment to the post of District Judge in ¹[West Bengal];

¹See footnote 2 on page 1, ante.

(Chapter IV.—Income-tax Authorities and Appellate Tribunal.—Chapter V.—Machinery of assessment.—Section 23.)

- (b) the lawyer member shall be a barrister or advocate of the High Court of Calcutta or a pleader who has practised professionally for a period of not less than five years or an Agricultural Income-tax practitioner who holds a degree in law of any Indian University and has practised professionally for a period of not less than five years;

Explanation.—Agricultural Income-tax practitioner in this clause has the same meaning as in clause (iv) of sub-section (2) of section 58.

- (c) the accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors' Certificate Rules, 1932:

Provided that the Provincial Government may appoint as accountant member of the Tribunal a person not qualified as required by this clause if the Provincial Government is satisfied that he is qualified in accountancy and has adequate experience of a character which renders him suitable for appointment to the Tribunal.

- (3) The appointment of any member of the Tribunal shall be for such period as the Provincial Government may determine and the period so determined may be extended from time to time by the Provincial Government for such further period or periods as the Provincial Government may consider necessary.

- (4) The judicial member shall be President of the Appellate Tribunal and during any period during which the appointment of a lawyer member or an accountant member is not made the President of the Appellate Tribunal shall for the purpose of the admission of appeals under section 36 be deemed to possess all the powers of the Appellate Tribunal.

- (5) If the members of the Appellate Tribunal differ in opinion on any point, the point shall be decided according to the opinion of the majority.

- (6) The procedure of the Appellate Tribunal in all matters relating to the discharge of its functions, including the place or places of its sittings, shall be as prescribed.

CHAPTER V.

Machinery of assessment.

Certificate
by com-
pany to
share-
holders
receiving
dividends.

23. The principal officer of every company shall at the time of distribution of dividends out of the agricultural income received by such company, furnish to every person receiving such dividend a certificate to the effect that the company has paid or will pay agricultural income-tax on

IV of 1944.]

(Chapter V.—Machinery of assessment.—Section 24.)

the agricultural income which is being distributed in the shape of dividend and specifying such other particulars as may be prescribed.

24. (1) The Agricultural Income-tax Officer shall, on 'Return of agricultural income.
or before such date in each year as may be prescribed, give notice, by publication in such newspapers and in such other manner as may be prescribed requiring every person whose total agricultural income during the previous year exceeded the maximum amount which is not chargeable to agricultural income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total agricultural income during that year:

Provided that the Agricultural Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons and shall in the case of agricultural income assessable under section 8 allow such extension of such date as may be necessary to enable the assessee to file any certified copy of an assessment order under the Indian Income-tax Act, 1922.

XI of 1922.

(2) In the case of any person whose total income is, in the Agricultural Income-tax Officer's opinion, of such an amount as to render such person liable to agricultural income-tax, the Agricultural Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth along with such other particulars as may be provided for in the notice his total agricultural income during the previous year:

Provided that the Agricultural Income-tax Officer may in his discretion extend the date for the delivery of the return and shall in the case of agricultural income assessable under section 8 allow such extension of such date as may be necessary to enable the assessee to file any certified copy of an assessment order under the Indian Income-tax Act, 1922.

XI of 1922.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of these sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Agricultural Income-tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce or cause to be produced such accounts or documents as the Agricultural Income-tax Officer may require:

Provided that the Agricultural Income-tax Officer may on reasonable grounds and on application being made to

(Chapter V.—Machinery of assessment.—Section 25.)

him in this behalf allow such accounts or documents to be produced on a date later than that specified in the notice:

Provided further that the Agricultural Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year,

Assessment.

25. (1) If the Agricultural Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 24 is correct and complete, he shall assess the total agricultural income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Agricultural Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 24 is correct and complete, he shall serve on such person, a notice requiring him, on a date to be therein specified, either to attend at the Agricultural Income-tax Officer's office or to produce, or cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2) or as soon afterwards as may be, the Agricultural Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Agricultural Income-tax Officer may require on specified points, shall, by an order in writing, assess the total agricultural income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) The powers conferred by sub-sections (2) and (3) shall not except with the permission of the Commissioner be exercised by the Agricultural Income-tax Officer in the case of agricultural income which is assessed under the provisions of sub-section (2) of section 8 and regarding which an assessee has submitted together with his return under section 24 a certified copy of an assessment order under the Indian Income-tax Act, 1922.

XI of
1922.

(5) If any person fails to make the return required by any notice given under sub-section (2) of section 24 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, or fails to produce before the Agricultural Income-tax Officer any order under the Indian Income-tax Act, 1922, or a certified copy thereof, which may be necessary under the provisions of this Act for the purpose of enabling any assessment to be made under section 8, such officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

[V. of 1944]

(Chapter V.—Machinery of assessment.—Sections 26, 27.)

26. (1) Where in any year under either head of agricultural income specified in section 5 it is computed that the sum on which agricultural income-tax is payable by the assessee is a negative quantity the assessee shall be deemed to have sustained a loss under that head to that extent and such loss shall be set off against the sum computed under the other head of agricultural income as that on which agricultural income-tax is payable in the same year.

Set off of loss in computing taxable agricultural income.

(2) Where the total sum computed under both heads of agricultural income as that on which agricultural income-tax is payable by an assessee in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1945, is a negative quantity, the assessee shall be deemed to have sustained a loss to that extent in that year, and such loss shall be carried forward to the following year and set off against the sum on which agricultural income-tax is computed to be payable in such year, and if such loss cannot be wholly set off in such year the amount of such loss not so set off shall be carried forward in the same manner to the next following year and so on, but no amount of such loss shall be carried forward for more than six successive years.

27. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the agricultural income-tax assessed as payable by such person, or any agricultural income-tax which would have been payable by him under this Act if he had not died.

Tax of deceased person payable by representative.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 24 or before he is served with a notice under sub-section (2) of section 24 or section 38, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 24 or under section 38, as the case may be, comply therewith, and the Agricultural Income-tax Officer may proceed to assess the total agricultural income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies without having furnished a return which he has been required to furnish under the provisions of section 24 or having furnished a return which the Agricultural Income-tax Officer has reason to believe to be incorrect or incomplete, the Agricultural Income-tax Officer may make an assessment of the total agricultural income of such person and determine the agricultural income-tax payable by him on the basis of such assessment, and for this purpose may by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representatives of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 8, 24 and 25 have required from the deceased person.

(Chapter V.—Machinery of assessment.—Sections 28—30.)

Assessment in case of discontinued firm or association.

28. (1) Where agricultural income is received by a company, firm or association of individuals and the business through which such agricultural income is received by such company, firm or association is discontinued in any year, an assessment may be made in that year on the basis of the agricultural income received during the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the agricultural income so received in the previous year.

(2) Any person discontinuing any such business shall give to the Agricultural Income-tax Officer notice of such discontinuance within thirty days thereof, and where any person fails to give the notice required by this sub-section, the Agricultural Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of agricultural income-tax subsequently assessed on him in respect of any agricultural income of the company, firm or association of individuals up to the date of the discontinuance of its business.

Change in constitution of a firm or ownership of business.

29. (1) Where, at the time of making an assessment under section 25, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted, at the time of making the assessment.

(2) Where a person carrying on any business in course of which agricultural income is received has been succeeded in such capacity by another person, such person and such other person shall each be assessed in respect of his actual share of the agricultural income of the previous year:

Provided that, when the person succeeded cannot be found, the assessment of the agricultural income of the year in which the succession took place up to the date of succession and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

Assessment after partition of a Hindu undivided family.

30. (1) Where, at the time of making an assessment under section 25, it is claimed by or on behalf of any member of a Hindu undivided family hitherto assessed as undivided that a partition has taken place among members or groups of members of such family, the Agricultural Income-tax Officer shall make due inquiry thereinto, and, if a certified copy of a decree of a competent Civil Court for partition of the joint family property or a document purporting to show that there is separate possession and enjoyment of such property is produced, and in the case of a document other than a certified copy of a decree the

(Chapter V.—Machinery of assessment.—Sections 31, (32).)

Agricultural Income-tax Officer is satisfied that such document has been acted upon by the parties thereof, or if the Agricultural Income-tax Officer is otherwise satisfied that the Hindu undivided family has ceased to exist as such and the agricultural income is being enjoyed separately by the members or groups of the members of such family in definite shares, he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, the Agricultural Income-tax Officer shall make an assessment of the total agricultural income received by or on behalf of the joint family as such, as if no partition had taken place, and each member or group of members shall, in addition to any agricultural income-tax for which he or it may be separately liable and notwithstanding anything contained in clause (b) of section 10, be liable for a share of the agricultural income-tax on the agricultural income so assessed according to the portion of the joint family property allotted to him or it; and the Agricultural Income-tax Officer shall make assessment accordingly on the various members and groups of members in accordance with the provisions of section 25:

Provided that all the members and groups of members whose joint family property has been partitioned during previous year shall be liable jointly and severally for the agricultural income-tax assessed on the total agricultural income received by or on behalf of the joint family as such up to the date of partition.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family.

31. Where an assessee within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Agricultural Income-tax Officer that he was prevented by sufficient cause from making the return required by section 24 or that he did not receive the notice issued under sub-section (4) of section 24, or sub-section (2) of section 25, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last mentioned notices, the Agricultural Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 25.

Cancellation of assessment where cause is shown.

32. (1) If the Agricultural Income-tax Officer, the Assistant Commissioner, the Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that any person—

Penalty for concealment of income.

(a) has without reasonable cause failed to furnish the return of his total agricultural income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 24 or

(Chapter V.—Machinery of assessment.—Sections 33, 34.)

section 38 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

- (b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 24 or sub-section (2) of section 25, or
- (c) has concealed the particulars of his agricultural income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the agricultural income-tax payable by him a sum not exceeding that amount, and in the cases referred to in clauses (b) and (c), in addition to any agricultural income-tax payable by him, a sum not exceeding the amount of the agricultural income-tax which would have been avoided if the income as returned by such person had been accepted as the correct agricultural income:

Provided that—

- (a) no penalty for failure to furnish the return of his total agricultural income shall be imposed on an assessee whose total agricultural income is less than five thousand rupees unless he has been served with a notice under sub-section (2) of section 24;
- (b) where a person has failed to comply with a notice under sub-section (2) of section 24 or section 38 and proves that he has no income liable to agricultural income-tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees.

(2) No order shall be made against a person under sub-section (1) unless such person has been heard or has been given a reasonable opportunity of being heard.

(3) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(4) When the Appellate Tribunal, the Commissioner or the Assistant Commissioner makes an order under sub-section (1) he shall forthwith send a copy of the same to the Agricultural Income-tax Officer concerned.

Notice of demand.

33. When any agricultural income-tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Agricultural Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable.

Appeal against assessment under this Act.

34. (1) Any assessee objecting to the amount of agricultural income assessed under section 25 or section 31 or the amount of loss computed under section 26 or the amount of agricultural income-tax determined under section 25 or section 31 or denying his liability to be assessed under this Act or objecting to a refusal of an Agricultural Income-tax

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(Chapter V.—Machinery of assessment.—Section 35.)

Officer to make a fresh assessment under section 31 or objecting to any order under section 30 or section 32 made by an Agricultural Income-tax Officer or objecting to any order imposing any penalty by an Agricultural Income-tax Officer under sub-section (1) of section 45 or objecting to a refusal of an Agricultural Income-tax Officer to allow a claim to a refund under section 47, 48 or 51 or the amount of the refund allowed by the Agricultural Income-tax Officer under any of those sections, may appeal to the Assistant Commissioner against the assessment or against such refusal or order:

Provided that no appeal shall lie against an order under sub-section (1) of section 45 unless the agricultural income-tax has been paid.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 30 or of the date of the refusal to make a fresh assessment under section 31 or of the intimation of an order under section 47, 48 or 51, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

35. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing: Hearing of appeal.

Provided that if the assessee or his agent is not present before the Assistant Commissioner when such day and place are fixed or such adjournment is made, the Assistant Commissioner shall inform the assessee or his agent by notice sent by post of the day and place fixed or of any date to which the hearing of such appeal is adjourned as the case may be.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Agricultural Income-tax Officer.

(3) The Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(4) In disposing of an appeal, the Assistant Commissioner may—

(a) in the case of an order of assessment—

(i) confirm, reduce, enhance or annul the assessment;
or

(ii) set aside the assessment and direct the Agricultural Income-tax Officer to make a fresh assessment after making such further inquiry as the Agricultural Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the

(Chapter V.—Machinery of assessment.—Section 36.)

Agricultural Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of agricultural income-tax payable on the basis of such fresh assessment; or

- (b) in the case of an order under section 47, section 48 or section 51 confirm, cancel or vary such order; or
- (c) in the case of an order under sub-section (1) of section 30, confirm such order or cancel it and either direct the Agricultural Income-tax Officer to make further inquiry and pass a fresh order to make an assessment in the manner laid down in sub-section (2) of section 30; or
- (d) in the case of an order under section 32 or sub-section (1) of section 45, confirm or cancel such order or vary it so as either to enhance or reduce the penalty; or
- (e) in the case of an appeal against a computation of loss under section 26, confirm or vary such computation:

Provided that the Assistant Commissioner shall not enhance an assessment or a penalty or reduce a refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or such reduction.

(5) The Assistant Commissioner shall on the conclusion of the appeal communicate the orders passed by him to the assessee and to the Commissioner.

**Procedure
of appeal
to the
Appellate
Tribunal.**

36. (1) Any assessee objecting to an order passed by the Assistant Commissioner under section 32 or section 35 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him.

(2) The Commissioner may, if he objects to an order passed by the Assistant Commissioner under section 35, direct the Agricultural Income-tax Officer to appeal to the Appellate Tribunal against such order and in such case the Agricultural Income-tax Officer shall make the appeal within sixty days from the date on which the order is communicated to the Commissioner by the Assistant Commissioner.

(3) The Appellate Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if he is satisfied that there was sufficient cause for not presenting it within that period.

(4) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of twenty-five rupees.

(5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders as it thinks fit, and shall communicate such orders to the assessee and to the Commissioner.

IV of 1944.]

(Chapter V.—Machinery of assessment.—Section 37.)

(6) Save as provided in section 63 the orders passed by the Appellate Tribunal on appeal shall be final.

(7) Where an appeal is made to the Appellate Tribunal under this section the costs shall be in the discretion of the said Tribunal.

37. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Power of
revision
by Com-
missioner.

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired; or
- (b) the order is pending on an appeal before the Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal; or
- (c) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal; or
- (b) where an appeal against the order has been made to the Assistant Commissioner, the appeal is pending before the Assistant Commissioner; or
- (c) the order has been made the subject of an appeal to the Appellate Tribunal:

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(Chapter V.—Machinery of assessment.—Sections 38, 39.)

(3) Every application by an assessee under sub-section (2) shall be accompanied by a fee of twenty-five rupees.

Income
escaping
assessment.

38. (1) If in consequence of definite information which has come into his possession the Agricultural Income-tax Officer discovers that agricultural income chargeable to agricultural income-tax has escaped assessment in any year, or has been under-assessed, or has been assessed at too low a rate, or has been the subject of excessive relief under this Act, the Agricultural Income-tax Officer may, at any time within four years of the end of that year, serve on the person liable to pay agricultural income-tax on such agricultural income, or in the case of a company or the Ruler of an Indian State, on the principal officer of such company or State, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 24 and may proceed to assess or re-assess such agricultural income and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the agricultural income-tax shall be charged at the rate at which it would have been charged had the agricultural income not escaped assessment or full assessment, as the case may be.

(2) No order of assessment under section 25 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry of four years from the end of the year in which the agricultural income was first assessable.

Rectifica-
tion of
mistake.

39. (1) The Commissioner may at any time within four years from the date of any order passed by him in revision under section 37, the Appellate Tribunal or the Assistant Commissioner may, at any time within four years from the date of any order passed by it or him on appeal and the Agricultural Income-tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him, on his own motion rectify any mistake apparent from the record of the revision, appeal, assessment or refund, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee:

Provided that no such rectification shall be made, having the effect of enhancing an assessment or reducing a refund unless the Commissioner, the Appellate Tribunal, the Assistant Commissioner or the Agricultural Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Agricultural Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment or reducing a refund the Agricultural Income-tax Officer shall serve on the assessee a notice

19 of 1944.]

(Chapter V.—Machinery of assessment.—Sections 40, 41.)

of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 33 and the provisions of this Act shall apply accordingly.

(4) Any assessee objecting to any such rectification which has the effect of enhancing the assessment or reducing a refund may, within thirty days of receipt of the notice of demand referred to in sub-section (3), appeal—

- (a) in the case where the rectification is made by an Agricultural Income-tax Officer, to the Assistant Commissioner and the provisions of sub-section (3) of section 34 and section 35 shall apply to every such appeal as if it were an appeal against an order of assessment under section 25 or an order of refund under section 47 or section 48;
- (b) in the case where the rectification is made by the Assistant Commissioner to the Appellate Tribunal and the provisions of sub-sections (4), (5), (6) and (7) of section 36 shall apply to every such appeal as if it were an appeal against an order passed by the Assistant Commissioner under section 35:

Provided that the provisions of sections 63 shall not apply to any order passed by the Appellate Tribunal on any such appeal.

40. In the determination of the amount of agricultural income-tax or of a refund payable under this Act, fraction of an anna less than six pies shall be disregarded, and fraction of an anna equal to or exceeding six pies shall be regarded as one anna.

Tax to be calculated to nearest anna.

41. The Agricultural Income-tax Officer, the Assistant Commissioner and the Appellate Tribunal shall, for the purposes of this chapter, and the Commissioner shall, for the purposes of section 37, have the same power as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

Power to take evidence on oath, etc.

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses;

and any proceeding before an Agricultural Income-tax Officer, Assistant Commissioner or the Appellate Tribunal under this chapter or before the Commissioner under section 37, shall be deemed to be a "Judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Act V of 1908.

Act XLV of 1900.

*(Chapter V.—Machinery of assessment.—Chapter VI.—
Recovery of tax and penalties.—Sections 42—44.)*

Power to
call for
informa-
tion.

42. The Agricultural Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

- (1) require any firm or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian, common manager, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, common manager, or agent, and of their addresses.

Power to
inspect the
register of
members
of any
company.

43. The Agricultural Income-tax Officer or any person authorized by him in writing in this behalf may inspect and, if necessary, take copies or cause copies to be taken of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

CHAPTER VI.

Recovery of tax and penalties.

Tax
when
payable.

44. (1) Any amount specified as payable in a notice of demand under section 33 or an order under section 35, section 36 or section 37, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default:

Provided that where an assessee has presented an appeal under section 34, or under clause (a) of sub-section (4) of section 39, if such assessee makes an application to the Agricultural Income-tax Officer, supported by a certified copy of an order by the Assistant Commissioner or a certified copy of any entry in any register maintained by the Assistant Commissioner showing that such appeal has been presented for an extension of the period allowed for payment of the said tax until the appeal is disposed of, the Agricultural Income-tax Officer shall, unless the Assistant Commissioner for reasons to be recorded in writing directs otherwise, extend such period until the disposal of the said appeal.

(2) If an assessee makes an application within the time mentioned in the notice of demand in section 33 for being allowed to pay the tax due by instalments, the Agricultural Income-tax Officer may in his discretion, by order in writing allow the assessee to pay the tax due in instalments not exceeding four in number at such intervals as the said officer may fix in his discretion:

Provided that if as a result of an application made by the assessee, the Agricultural Income-tax Officer allows the

[IV of 1944.]

(Chapter VI.—*Recovery of tax and penalties.*—Sections 45, 46.)

assessee to pay the tax due in instalments, the assessee shall be deemed to have waived all his rights of appeal under this Act:

Provided further that if, on being allowed to pay the tax due by instalments, the assessee defaults in the payment of any one instalment he shall be deemed to be a defaulter in respect of the total remaining amount of tax due.

45. (1) When an assessee is in default in making a payment of agricultural income-tax, the Agricultural Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding half that amount shall be recovered from the assessee by way of penalty. Mode and time of recovery.

(2) For the purposes of sub-section (1), the Agricultural Income-tax Officer may direct the recovery of any sum less than half the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed half the amount of the arrears payable.

(3) The Agricultural Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount or arrears due from an assessee, and the Collector on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

Act V of
1908.

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree.

(4) No proceeding for the recovery of any tax payable under this Act shall be commenced after the expiration of three years after,—

- (a) the last date on which the tax is payable without the assessee being deemed to be in default, or
- (b) the date on which the last instalment fixed under sub-section (2) of section 44 falls due, or
- (c) the date on which any appeal relating to the payment of tax has been disposed of,

whichever is the later.

46. Any sum imposed by way of penalty under this Act shall be recoverable in the manner provided in this chapter for the recovery of arrear of agricultural income-tax. Recovery of penalties.

(Chapter VII.—Refunds.—Sections 47, 48.)

CHAPTER VII.

*Refunds.***Refunds.**

47. (1) If any individual, Hindu undivided family, company, Ruler of an Indian State, firm or other association of persons satisfies the Agricultural Income-tax Officer that the amount of agricultural income-tax paid by him or by it or on his or its behalf or treated as paid on his or its behalf for any year exceeds the amount with which he or it is properly chargeable under this Act for that year, he or it shall be entitled to a refund of any such excess.

(2) The Assistant Commissioner in the exercise of his appellate powers or the Commissioner in the exercise of his powers of revision if satisfied to the like effect shall cause a refund to be made by the Agricultural Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Where agricultural income of one person is included under any provision of this Act in the total agricultural income of any other person such other person only shall be entitled to a refund under this section in respect of such agricultural income.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief.

Refunds of
tax deemed
to have
been paid
by com-
panies,
firms and
associa-
tions
on behalf of
others.

48. (1) Notwithstanding anything in section 47, a shareholder of a company, a partner of a firm or a member of an association of individuals on whose behalf agricultural income-tax is by section 17 deemed to have been paid by such company, firm or association, shall be entitled to a refund of agricultural income-tax on account of any difference between the rate of agricultural income-tax applicable under this Act to the total agricultural income of such company, firm or association and the average rate which would be applicable to the total world income of such shareholder, partner or member if such total world income were agricultural income chargeable to agricultural income-tax under this Act.

(2) Any share-holder of a company, partner of a firm or member of an association of individuals who is deemed to be entitled under the provisions of sub-section (1) to a refund of agricultural income-tax in respect of the previous year may apply to the Agricultural Income-tax Officer in the prescribed manner for such refund, and if the Agricultural Income-tax Officer after such inquiry as he thinks necessary is satisfied that a refund under the provisions of sub-section (1) is due he shall compute the amount of such refund according to the provisions of sub-section (3) and such amount shall be paid to the share-holder, partner or member, as the case may be.

(Chapter VII.—Refunds.—Section 49.)

(3) The amount of any refund of agricultural income-tax due under the provisions of sub-section (1) shall be the product of the amount of agricultural income on which tax is deemed to have been paid by a company, firm or association of individuals and has been received by a share-holder, partner or member, as the case may be, and the difference between the rate of agricultural income-tax applicable to the total agricultural income of the said company, firm or association chargeable to agricultural income-tax under this Act, and the average rate of such tax applicable to an amount equivalent to the total world income of such share-holder, partner or member in the previous year.

(4) "Average rate" in sub-section (3) means the rate obtained by dividing the amount of agricultural income-tax which would be payable by assessee in the year of assessment if his total world income in the previous year were agricultural income chargeable to agricultural income-tax at the rates applicable under this Act by the said total world income.

(5) For the purpose of determining the total world income,—

XI of 1922.

(a) where the total world income of an assessee under the Indian Income-tax Act, 1922, has been computed for the purposes of that Act, that computation shall be accepted as determining the total world income under that Act for the purposes of this Act and if such a computation has not been made the total world income of an assessee under that Act shall be computed in the manner prescribed;

(b) the agricultural income derived from land outside ¹[West Bengal] shall be calculated in the manner prescribed.

Explanation.—A certified copy of an order computing the total world income under the Indian Income-tax Act, 1922, shall be conclusive evidence of the contents thereof.

49. (1) The Provincial Government may, by notification in the *Official Gazette*, make provision for the granting of relief in respect of agricultural income on which both agricultural income-tax under this Act and other income-tax have been paid.

Reciprocal relief in respect of double taxation with other Governments.

(2) For the purposes of this section "other income-tax" means any income-tax, super-tax or sur-tax charged under—

(a) any law of a Province other than ¹[West Bengal] in force in that Province, or

(b) any law in force in any Indian State, or in any part of His Majesty's Dominions, or in the United Kingdom.

where the laws of such Province, State or part of His Majesty's Dominions, or of the United Kingdom, as the case may be, provide for relief in respect of tax charged on

¹See footnote 2 on page 1, ante.

(Chapter VII.—Refunds.—Chapter VIII.—Offences and penalties.—Sections 50—53.)

income both in such Province, State or part of His Majesty's Dominions, or in the United Kingdom, as the case may be, and in ¹[West Bengal], which appears to the Provincial Government to correspond to the relief which may be granted under this section.

Power to
set off
amount of
refunds
against tax
remaining
payable.

50. Where under any of the provisions of this Act, a refund is found to be due to any person, the Agricultural Income-tax Officer, the Assistant Commissioner or the Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the agricultural income-tax, if any, remaining payable by the person to whom the refund is due.

Power of
representa-
tive of

person
or persons
disabled to
make
claim on
his behalf.

51. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 47 or section 48 is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Limitation
of claims
for refunds.

52. No claim to any refund of agricultural income-tax under this chapter shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the agricultural income was received.

CHAPTER VIII.

Offences and penalties.

Failure to
make
payments
or deliver
returns or
statements
or allow
inspections.

53. (1) If a person fails without reasonable cause or excuse—

- (a) to furnish in due time any of the returns mentioned in section 24 or section 42;
- (b) to produce or cause to be produced, on or before the last date allowed by the Agricultural Income-tax Officer under the first proviso to sub-section (4) of section 24 or the date mentioned in the notice under the said sub-section, whichever is the later, such accounts, or documents as are referred to in the notice;
- (c) to grant inspection or allow copies to be taken in accordance with the provisions of section 43.

he shall, on conviction of such offence before a Magistrate, be punishable with a fine which may extend to fifty rupees.

(2) If a person after having been convicted of any offence referred to in sub-section (1) continues to commit such offence, he shall be punished for each day after the first during which he continues so to offend with fine which may extend to five rupees.

¹See footnote 2 on page 1, ante.

[No. of 1944.]

(Chapter VIII.—Offences and penalties.—Sections 54—56.)

54. If a person makes a statement in a verification mentioned in section 24 or sub-section (3) of section 34 or sub-section (4) of section 36 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

False statement in declaration.

55. (1) A person shall not be proceeded against for an offence under section 53 or section 54 except at the instance of the Commissioner.

Prosecution to lie at the instance of Commissioner.

(2) The Commissioner may, subject to such conditions as may be prescribed, either before or after the institution of proceedings compound any such offence.

56. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment, proceeding or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in sub-section (3), be entitled to require any servant of the Crown to produce before it any such return, accounts, documents or record or any part of such record, or to give evidence before it in respect thereof.

Disclosure of information by public servant.

1 of 1872.

(2) If, save as provided in sub-section (3), any servant of the Crown discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to—

- (a) the disclosure of any of the particulars referred to in sub-section (1) for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, returns, accounts, documents, affidavit, deposition, record or evidence or for the purposes of carrying into effect the provisions of this Act;
- (b) the disclosure to an officer of the Central Government of such facts as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on income other than agricultural income;
- (c) the production by a servant of the Crown before a Court of any document, declaration or affidavit filed or the record of any statement or deposition made in a proceeding under section 30 or to the giving of evidence by a servant of the Crown in respect thereof.

(4) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

Act XLV of 1860.

(Chapter IX.—Miscellaneous.—Sections 57, 58.)

CHAPTER IX.

Miscellaneous.

Power to
make rules.

57. (1) The Provincial Government may, subject to the condition of previous publication, make rules¹ consistent with the provisions of this Act for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe in accordance with the provisions of this Act the manner of ascertainment and determination of agricultural income;
- (b) prescribe the procedure to be followed on application for refunds allowable under this Act;
- (c) provide for any matter which by this Act is to be prescribed.

Appear-
ance by
authorised
representa-
tive.

58. (1) An assessee, who is entitled or required to attend before the Appellate Tribunal or any agricultural income-tax authority in connection with any proceeding under this Act otherwise than when required under section 41 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or agricultural income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section—

- (i) a person regularly employed by the assessee shall include any officer of a banking company with which the assessee maintains a current account or has other regular dealings.

Explanation.—“Banking company” means a banking company as defined in section 277F of the Indian Companies Act, 1913;

VII of
1913.

- (ii) “lawyer” means a Barrister-at-law or Solicitor or any other person entitled to plead in any Court of law in [all the Provinces of India];
- (iii) “accountant” means a registered accountant enrolled in the Register of Accountants, maintained by the Central Government under the Auditor’s Certificate Rules, 1932, or holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an Association of Accountants recognised by the Central Board of Revenue;

¹For rules under this section see the Bengal Statutory Rules and Orders, 1940.

²These words within square brackets were substituted for the words “British India” by the India (Adaptation of Existing Indian Laws) Order, 1947.

(Chapter IX.—Miscellaneous.—Sections 59—61.)

(iv) "agricultural income-tax practitioner" means any person who has acquired such educational qualifications as may be prescribed and has been registered in the manner prescribed as such a practitioner.

(3) If any lawyer or registered accountant is found guilty of misconduct in connection with any agricultural income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner, the Commissioner may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

- (a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard;
- (b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the High Court; and
- (c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred until the disposal of the appeal.

59. A receipt shall be given for any money paid or recovered under this Act. Receipts to be given.

Act V of 1908.

60. (1) A notice or requisition under this Act may be served on the person therein named either by post, or as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908. Service of notices.

(2) Any such notice or requisition may—

- (a) in the case of a firm, or a Hindu undivided family, be addressed to any member of the firm or to the manager of the family; and
- (b) in the case of the Ruler of an Indian State, a company or any other association of individuals be addressed to the principal officer thereof.

61. (1) Where an assessee is a company having a registered office in ¹[West Bengal], it shall be assessed by the Agricultural Income-tax Officer of the area in which such registered office is situated. Place of assessment.

(2) Where an assessee is a company not having a registered office in ¹[West Bengal] or is a firm or other association of individuals, it shall be assessed by the Agricultural Income-tax Officer of the area where the principal accounts relating to its agricultural income are kept.

(3) In all other cases the assessee shall be assessed by the Agricultural Income-tax Officer of the area in which such

¹See footnote 2 on page. 1, ante.

(Chapter IX.—Miscellaneous.—Sections 62, 63.)

assessee resides and where the assessee resides outside ¹[West Bengal] by the Agricultural Income-tax Officer of the area in which the agent or the principal officer of such assessee resides:

Provided that if the accounts relating to the agricultural income of an assessee are kept in any place in ¹[West Bengal], such assessee shall have the option of being assessed by the Agricultural Income-tax Officer of the area in which such place is situated.

Explanation.—In the case of a Hindu undivided family, an assessee shall for the purpose of this sub-section be deemed to reside where the manager of the family resides.

(4) Where an option is exercisable by an assessee under the proviso to sub-section (3), he shall exercise such option within thirty days of the publication of the notice under sub-section (1) of section 24 or where a notice under sub-section (2) of that section is served, within thirty days from the service of such notice.

(5) Where any question arises under this section as to the place of assessment, such question shall be determined by the Assistant Commissioner after giving the assessee an opportunity of being heard.

(6) Where an assessment has once been made under this Act by an Agricultural Income-tax Officer, no objection relating to the place of assessment shall lie against such assessment.

(7) Subject to the provisions of this section every Agricultural Income-tax Officer shall have all the powers conferred by or under this Act on the Agricultural Income-tax Officer in respect of any agricultural income derived from land situated within the area to which he is appointed.

Indemnity.

62. Every person retaining or paying any tax in pursuance of this Act in respect of agricultural income belonging to another person is hereby indemnified for the retention or payment thereof.

**Statement
of case by
Appellate
Tribunal
to High
Court.**

63. (1) Within sixty days of the date upon which he is served with a notice of an order under sub-section (5) of section 36 the assessee or the Commissioner may by application in the prescribed form, accompanied when the application is made by the assessee, by a fee of fifty rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and the Appellate Tribunal shall within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that, if in the exercise of its powers under sub-section (2) the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application, and if he does so, the fee paid shall be refunded.

¹See footnote 2 on page 1, ante.

[IV of 1944.]

(Chapter IX.—Miscellaneous.—Section 63.)

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within ninety days from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may, within sixty days from the date on which he is served with notice of the rejection apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.

Pages 285-286—

In sections 63 and 64, for the words "His Majesty in Council" substitute the words "the Supreme Court"; for the words "Judicial Committee of the Privy Council" substitute the words "Supreme Court".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

until the disposal of the appeal to His Majesty in Council¹.

IX of 1908.

(8) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the Appellate Tribunal under sub-section (1) or to the High Court under sub-section (2) or sub-section (3).

¹See footnote 2 on page 259, ante.

(Chapter IX.—Miscellaneous.—Sections 64—66.)

Reference
to be heard
by a Bench
of the High
Court, and
appeal to
lie in
certain
cases to
Privy
Council.

Act V of
1908.

64. (1) When any case has been referred to the High Court under section 63, it shall be heard by a Bench of not less than two judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall so far as may be, apply notwithstanding anything contained in the Letters Patent of the High Court or in any other law for the time being in force.

(2) An appeal shall lie to His Majesty in Council¹ from any judgment of the High Court delivered on a reference made under section 63 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council¹.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council¹ shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 63:

Provided further that the High Court may, on petition made for the execution of the order of His Majesty in Council¹ in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council¹ in the manner provided in sub-sections (5) and (7) of section 63 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council¹, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council², and for the time being in force, for the presentation of appeals to His Majesty in Council¹, or their conduct before the said Judicial Committee².

Bar of suits
in Civil
Courts.

65. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under this Act.

Computa-
tion of
periods of
limitation.

66. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 63 the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

¹See footnote 2 on page 259, ante.

²From the 1st day of February, 1948, the "Judicial Committee of the Privy Council" has no jurisdiction over the Indian Union, see in this connection the Federal Court (Enlargement of Jurisdiction) Act, 1947 (I of 1948).

IV of 1944.]

(*The Schedule.*)

THE SCHEDULE.

(*See section 3.*)

Rates of agricultural income-tax.

A. (1) In the case of every individual, Hindu undivided family (other than a Hindu undivided family consisting of brothers only), or Ruler of an Indian State:

	Rate.
(a) On the first Rs. 1,500 of the total agricultural income.	Nil.
(b) On the next Rs. 3,500 of the total agricultural income.	Nine pies in the rupee.
(c) On the next Rs. 5,000 of the total agricultural income.	One anna in the rupee.
(d) On the next Rs. 5,000 of the total agricultural income.	One anna and six pies in the rupee.
(e) On the next Rs. 5,000 of the total agricultural income.	Two annas in the rupee.
(f) On the balance of the total agricultural income.	Two annas and six pies in the rupee.

(2) In the case of every Hindu undivided family which consists of brothers only:

	Rate.
(a) If the share of a brother is Rs. 3,500 or less.	Four pies in the rupee. —
(b) If the share of a brother exceeds Rs. 3,500.	The average rate applicable to the share of such brother if he were assessed as an individual.

Provided that—

(i) no agricultural income-tax shall be payable on a total agricultural income which does not exceed Rs. 3,500;

(ii) in the case of an individual or Hindu undivided family whose only source of agricultural income is the land possessed by such individual or family and cultivated by such individual or the members of such family, as the case may be, with or without the aid of hired labourers, no agricultural income-tax shall be payable by such individual or family on the agricultural income derived from such land if the area of such land does not exceed one hundred standard *bighas*;

(iii) the agricultural income-tax payable shall in no case exceed half the amount by which the total agricultural income exceeds Rs. 3,500.

Explanation.—For the purposes of this Schedule—

(i) “brother” includes the son and the son of a son of a brother and the widow of a brother;

The Bengal Agricultural Income-tax Act, 1944.

[Ben. Act IV of 1944.]

(The Schedule.)

- (ii) "share of a brother" means the portion of the total agricultural income of a Hindu undivided family which would have been allotted to a brother if a partition of the property of such family had been made on the last day of the previous year;
- (iii) "average rate" means the amount of agricultural income-tax payable by an individual on his total agricultural income divided by the amount of such total agricultural income.

B. In the case of every company, firm or other association of individuals:

Rate.

On the whole of the total agricultural income	Two annas and six pies in the rupee.
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Bengal Act V of 1944¹

THE BENGAL ALIENATION OF AGRICULTURAL LAND (TEMPORARY PROVISIONS) ACT, 1944.

[4th January, 1945.]

An Act to provide for the restoration to proprietors, tenure-holders, raiyats and under-raiyats of certain agricultural lands alienated by them during the year 1943 as a result of the prevailing economic distress.

WHEREAS it is expedient to provide for the restoration to proprietors, tenure-holders, *raiya*ts and under-*raiya*ts of certain agricultural lands alienated by them during the year 1943 as a result of the prevailing economic distress;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Alienation of Agricultural Land (Temporary Provisions) Act, 1944. Short title and extent.

(2) It extends to the whole of ²[West Bengal].

2. In this Act unless there is anything repugnant in the subject or context,— Definitions.

(1) “agricultural land”—

(a) when used with reference to a proprietor or tenure-holder, means any land which on the date of the transfer of such land by sale referred to in sub-section (1) of section 4 was comprised in the estate or tenure, as the case may be, of, and held in *khas* by, the proprietor or tenure-holder who made such transfer; and

(b) when used with reference to a *raiya*t or under-*raiya*t, means a holding or a part of a holding of such *raiya*t or under-*raiya*t;

(2) “Collector” means the Collector of a district or any other officer appointed by the Provincial Government to discharge the functions of a Collector under this Act;

(3) “complete usufructuary mortgage” means a transfer of the right of possession in any land for the purpose of securing the payment of the mortgage debt upon the condition that the said debt shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage;

(4) “prescribed” means prescribed by rules made under this Act;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 27th January, 1944; for the proceedings of the Council see the proceedings of the meetings of the Bengal Legislative Council held on the 8th, 10th, 15th February, 6th, 7th, 20th, 21st and the 23rd March, 1944; for the proceedings of the Assembly see the proceedings of the meetings of the Bengal Legislative Assembly held on the 20th and the 21st November, 1944.

²See footnote 2 on page 1, ante.

(Sections 3, 4.)

- (5) "proprietor," "tenure-holder," "*raiyat*," "under-*raiyat*," "landlord," "estate," "tenure," "holding" and "improvement" have the same meanings as they have in the Bengal Tenancy Act, 1885;
- (6) references to "proprietor," "tenure-holder," "*raiyat*," "under-*raiyat*" and "transferee" shall be deemed to include references to their successors in interest.

VIII of
1885.

Effect of
provisions
of this Act
where
incon-
sistent
with other
law.

3. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law for the time being in force.

Procedure
for effect-
ing restor-
ation of
lands alie-
nated by
proprie-
tors,
tenure-
holders,
raiyats or
under-
raiyats in
1943.

4. (1) If on or after the 1st January, 1943, and before the 1st January, 1944, a proprietor, tenure-holder, *raiyat* or under-*raiyat* has transferred any agricultural land by sale for any consideration the amount or value of which does not exceed two hundred and fifty rupees, and if,—

- (a) he applies in the prescribed manner to the Collector at any time before the 25th day of December, 1945, for the restoration of such land to him; and
- (b) he satisfies the Collector that he could not have maintained himself or his family except by making such alienation of such land;

the Collector shall, after giving the transferee and if such land is in the possession of any person other than the transferee, such other person also an opportunity of being heard, make an order in writing restoring such land to such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, and directing such proprietor, tenure-holder, *raiyat* or under-*raiyat* in the manner provided in sub-section (2) to pay in ten annual instalments by such dates as may be specified in the order the amount of such consideration or its value together with interest on such amount at the rate of three and one-eighth *per centum per annum* from the date of his receipt of such consideration and the amount of any compensation for improvements effected to such land, allowed by the Collector and determined by him in the manner prescribed, less the amount determined in the manner prescribed of the net income from such land of the person in possession of such land as a result of such alienation:

Provided that the first of such instalments shall be payable on a date not later than the 1st day of *Baishakh* next following the date of the order.

[V of 1944.]

(Section 4.)

(2) When the Collector makes an order for payment by instalments under sub-section (1), he shall direct such instalments to be paid—

- (a) in the case where the agricultural land in respect of which such order is made has been alienated by the transferee before the date of such order by means of a *bona fide* transfer for valuable consideration or a *bona fide* gift by a registered instrument or *heba*, to the person in possession of such land as a result of such alienation;
- (b) in the case where such land has been alienated by the transferee before such date by means of a *bona fide* lease for valuable consideration or a usufructuary mortgage, to the transferee and the person in possession of such land as a result of such alienation in such proportion and in such manner as may be determined by the Collector and specified in the order; and
- (c) in other cases, to the transferee:

Provided that if such land is subject to a *bona fide* mortgage other than a usufructuary mortgage and such mortgage was executed after the transfer of such land referred to in sub-section (1), the Collector shall direct that such instalments shall first be paid to the mortgagee until the amount due under the mortgage as determined by the Collector is paid off and that thereafter any such instalments or part thereof still remaining due shall be paid in the manner provided in clause (a), clause (b) or clause (c) of this sub-section, as the case may be.

(3) Where an application made under sub-section (1) is accompanied by a statement verified in the manner prescribed that the proprietor, tenure-holder, *raiyat* or under-*raiyat* who made the transfer of the agricultural land by sale referred to in that sub-section could not have maintained himself or his family except by making such alienation of such land, the Collector shall for the purpose of clause (b) of that sub-section presume such statement to be correct until the contrary is proved.

(4) The amount ordered to be paid by instalments by a proprietor, tenure-holder, *raiyat* or under-*raiyat* under sub-section (1) shall be a charge on the agricultural land in respect of which the order under that sub-section has been made.

(5) Where any agricultural land in respect of which an order under sub-section (1) is made is, after the date on which such order takes effect under sub-section (1) of section 5, sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a certificate for the recovery of any amount payable under such order, the whole of the amount payable under the said order then remaining due shall notwithstanding anything contained in such order at once become due and payable.

(Sections 5—7.)

Effect of
order for
restoration
of lands.

5. (1) When the Collector makes an order under sub-section (1) of section 4 restoring any agricultural land to a proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, such order shall have effect on the 1st day of *Baisakh* next following the date of the order.

(2) From the date on which an order under sub-section (1) of section 4 takes effect under sub-section (1) of this section, the right, title and interest in the agricultural land accruing to the transferee as a result of the transfer referred to in sub-section (1) of section 4 shall, subject to the provisions of sub-section (4) of that section, be deemed to have vested in the proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, free from all encumbrances, if any, which have been created after the date of such transfer.

(3) If on or before the date on which an order under sub-section (1) of section 4 takes effect under sub-section (1) of this section, the person in possession of the agricultural land as a result of the transfer referred to in sub-section (1) of section 4 has not yielded possession of such land to the proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, the Collector may of his own motion, and shall on the application of such proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, eject such person and place such proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, in possession of such land.

Recovery
of sums
due under
an order
under sec-
tion 4 as a
public
demand.

6. Any sum payable under an order made under section 4 shall be recoverable as a public demand:

Provided that the Certificate Officer shall not order the execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for the recovery of any amount due under an order made under sub-section (1) of section 4 by the sale of the agricultural land in respect of which the order under that sub-section has been made unless he is satisfied that all the instalments payable under the said order have already become due.

Ben. Act
III of
1913.

Prohibi-
tion of
alienation
until sums
due under
an order
under sec-
tion 4
are paid.

7. A proprietor, tenure-holder, *raiyyat* or under-*raiyyat* to whom any agricultural land has been restored by an order under sub-section (1) of section 4 shall not as long as there remains unpaid any sum payable by such proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, under the order made under that sub-section, alienate by sale, lease, gift or other form of transfer or create any charge upon such land or any portion thereof and, notwithstanding anything contained in any other law for the time being in force, any alienation or charge so made shall be void and of no effect.

(Section 8.)

8. (1) A proprietor, tenure-holder, *raiyyat* or under-*raiyyat* who is entitled to apply for the restoration of any agricultural land under sub-section (1) of section 4 may, instead of applying for such restoration under that sub-section apply at his opinion for the conversion of the transfer by sale of such land into a complete usufructuary mortgage and in such case if the proprietor, tenure-holder, *raiyyat* or under-*raiyyat* otherwise complies with the provisions of clauses (a) and (b) of the said sub-section, the Collector shall, first determine the amount which would have been payable by such proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, under the said sub-section if an order under that sub-section for the restoration of such land had been made and, then make an order in writing converting the said transfer by sale into a complete usufructuary mortgage with—

Optional conversion of transfer by sale of land into complete usufructuary mortgage.

(a) in the case of alienation by any of the means referred to in clause (a) of sub-section (2) of section 4, the person in possession of such land as a result of such alienation as the mortgagee, and

(b) in all other cases, the transferee as the mortgagee, for a period of ten years or such shorter period as in the circumstances of the particular case is in the opinion of the Collector justified, and the amount so determined by the Collector shall be deemed to be the mortgage debt for the payment of which such mortgage is created.

(2) When the Collector makes an order under sub-section (1) converting a transfer by sale into a complete usufructuary mortgage for a period specified by him, the right, title and interest in the agricultural land accruing to the transferee as a result of the transfer shall, with effect from the date of such order, be deemed to have vested in such proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, subject to such complete usufructuary mortgage and free from all other encumbrances, if any, created after the date of the transfer and the liability for the payment of any amount referred to in sub-section (1) shall be deemed to be extinguished on the expiry of the said period.

(3) When the Collector makes an order under sub-section (1) converting a transfer by sale into a complete usufructuary mortgage for a period specified by him, such complete usufructuary mortgage may notwithstanding anything contained in sub-section (2) be redeemed at any time before the expiry of such period.

(4) On the expiry of the period of the mortgage or on the redemption of the mortgage before the expiry of such period under sub-section (3), if the mortgagee does not yield possession of the mortgaged land to the proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, the Collector may of his own motion, and shall on the application of such proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, eject the mortgagee and place, such proprietor, tenure-holder, *raiyyat* or under-*raiyyat*, as the case may be, in possession of such land.

294 *The Bengal Alienation of Agricultural Land
(Temporary Provisions) Act, 1944.*

[Ben. Act V of 1944.]

(Sections 9—11.) ,

Notice of restoration of land or of the conversion of the transfer by sale of land into a complete usufructuary mortgage on the landlord.

9. Before making an order under sub-section (1) of section 4 restoring any agricultural land to a tenure-holder, *raiyat* or under-*raiyat* or an order under sub-section (1) of section 8 converting a transfer by sale of any agricultural land of a tenure-holder, *raiyat* or under-*raiyat* into a complete usufructuary mortgage the Collector shall require such tenure-holder, *raiyat* or under-*raiyat* to deposit such fee as may be prescribed for the service of a notice of such order in the prescribed form in the case, where such order relates to any agricultural land of a tenure-holder on the landlord of the tenure in which such land is comprised and, in the case where such order relates to any agricultural land of a *raiyat* or under-*raiyat*, on the landlord under whom such land is held, and the Collector shall as soon as may be after such order is made cause such notice to be served on such landlord in the prescribed manner, and on receipt of such notice the landlord shall cause his rent roll to be corrected accordingly.

Bar of jurisdiction of High Court and Civil Courts.

10. Neither the High Court nor any Civil Court shall have jurisdiction in any matter which the Collector is empowered to dispose of under this Act:

Provided that any person who is dissatisfied with any order of the Collector made under section 4 or sub-section (1) of section 8 may within thirty days from the date of such order apply in the prescribed manner to the District Judge for the revision of such order and the decision of the District Judge thereon shall be final.

Power to make rules.

11. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner in which a proprietor, tenure-holder, *raiyat* or under-*raiyat* is to apply to the Collector under clause (a) of sub-section (1) of section 4;
- (b) the manner in which the Collector is to determine the amount of any compensation allowed under sub-section (1) of section 4;
- (c) the manner in which the net income referred to in sub-section (1) of section 4 is to be determined;
- (d) the manner in which the verification of the statement referred to in sub-section (3) of section 4 is to be made;
- (e) the fee to be deposited for the service of the notice referred to in section 9 and the form and the manner of service of such notice; and
- (f) the manner of application for revision under the proviso to section 10.

Bengal Act VI of 1944¹

THE BENGAL DISEASES OF ANIMALS ACT, 1944.

[11th January, 1945.]

An Act to provide for the prevention of the spread of contagious diseases amongst animals in Bengal.

WHEREAS it is expedient to provide for the prevention of the spread of contagious diseases amongst animals in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Diseases of Animals Act, 1944. Short title and extent.

(2) It extends to the whole of ²[West Bengal].

2. In this Act unless there is anything repugnant in the subject or context,— Definitions.

(1) "animals" means bulls, bullocks, cows, oxen, heifers, calves, buffaloes, sheep, goats, and all other ruminating animals, dogs, swine and includes such other domesticated animals excepting horses, camels, asses and mules as may be specified in this behalf by the Provincial Government by notification in the *Official Gazette*;

(2) "contagious disease" means rinderpest (that is to say, the disease commonly known as cattle plague), anthrax, haemorrhagic septicaemia, foot-and-mouth disease, rabies and includes such other diseases as may be declared by the Provincial Government by notification in the *Official Gazette* to be contagious diseases for the purposes of this Act;

(3) "infected area" means an area in respect of which a notification under section 5³ is in force;

(4) "infective" used with reference to an animal means affected by a contagious disease or having recently been in contact with or proximity to an animal so affected;

(5) "prescribed" means prescribed by rules made under this Act;

(6) "Veterinary Assistant" means a Veterinary Assistant of ²[West Bengal] Civil Veterinary Department acting within the local limits of his jurisdiction and in the absence of the said Veterinary Assistant from his jurisdiction, includes any officer of

¹For Statement of Objects and Reasons See the *Calcutta Gazette*, dated the 27th January, 1944; the Report of the Select Committee was presented to the Council on the 17th April, 1944; for the proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council, held on the 8th February, 23rd March and 17th, 25th and the 26th April, 1944; for the proceedings of the Assembly see the proceedings of the meeting of the Bengal Legislative Assembly held on the 22nd November, 1944.

²See footnote 2 on page 1, *ante*.

(Sections 3—5.)

the said department who in the opinion of the Provincial Government possesses suitable qualifications in veterinary medicine and who is authorised by the Provincial Government to carry on the duties of the Veterinary Assistant under this Act in such absence.

Report of
contagious
disease.

3. (1) Every owner or person in charge or having control of an animal, and every veterinary practitioner attending any animal in the course of his veterinary practice or otherwise, who has reason to believe that such animal is infective shall forthwith report and any other person who has reason to believe that an animal is infective may report the fact to the President of the union board within the area of which such animal is for the time being kept.

(2) The President of the union board on receiving any report under sub-section (1) shall without delay communicate such report to the Subdivisional Magistrate who shall, unless for reasons to be recorded in writing he considers that the report is unfounded in fact, instruct the Veterinary Assistant to proceed to the place where the animal is for the time being kept and examine the animal and inquire into the circumstances of the case, and on receiving such instructions the Veterinary Assistant shall without delay comply therewith.

(3) Whenever a Veterinary Assistant has reason to believe that any animal within his jurisdiction is infective he shall proceed as soon as possible to the place where the animal is and examine it and inquire into the circumstances of the case, notwithstanding that no report under sub-section (2) in respect of such animal has been received by him.

(4) If after the examination and inquiry referred to in sub-section (2) or sub-section (3) the Veterinary Assistant is of the opinion that the animal is infective, he shall report the matter in the manner prescribed to the Provincial Government or to such officer of the ¹[West Bengal] Civil Veterinary Department as the Provincial Government may appoint in this behalf and the Veterinary Assistant shall also take such further action under the provisions of this Act as may be necessary or expedient and at the same time shall send a copy of such report to the Subdivisional Magistrate.

Duty to
segregate
infective
animals.

4. Every owner or person in charge or having control of an animal who has reason to believe that such animal is infective shall as far as may be possible in the circumstances segregate such animal in a place apart from all other animals which are not infective and shall take all possible steps to prevent any animal which is not infective from coming into contact with or approaching near to such animal.

Declara-
tion of
infected
areas.

5. (1) The Provincial Government or such officer as it may authorise in this behalf may, by notification published in the manner prescribed declare any area in which any contagious disease has broken out, or any area within which in

¹See footnote 2 on page 1, *ante*.

VI of 1944.]

(Sections 6—8.)

the opinion of the Provincial Government, or such officer, there is a danger of the spread of any such disease, to be an infected area.

(2) Every notification under sub-section (1) shall specify the limits of the area which is declared to be an infected area and shall also specify the contagious disease in respect of which the area is declared to be an infected area.

6. (1) Save in accordance with the conditions of a licence granted by Veterinary Assistant—

Prohibition of movement of animals, etc., into or out of infected areas.

(a) no person shall remove any animal, alive or dead, or any product of any animal (including its excreta) or any part of any animal or any fodder, bedding, harness or other thing used in connection with an animal, and

(b) no person owning or having charge or control of any animal shall allow such animal to proceed,

from any place within an infected area to any place outside such area or from any place outside an infected area to any place within such area.

(2) Nothing in sub-section (1) shall prevent the carriage by railway or by any mechanically propelled vessel of a type approved by the Provincial Government of any animal or thing referred to in that sub-section through an infected area:

Provided that if such animal or thing at any stage during its carriage by railway or such vessel through an infected area is unloaded therein it shall not be removed therefrom save in accordance with the provisions of sub-section (1).

7. (1) In all cases in which preventive vaccination or inoculation is possible and practicable against the contagious disease in respect of which an area has been declared to be an infected area, the Veterinary Assistant shall vaccinate or inoculate, as the case may be, such kinds or classes of animals in that area as may be prescribed in respect of such disease and the owner or person in charge or having control of every such animal shall render every facility and assistance to him in carrying out such vaccination or inoculation.

Preventive vaccination or inoculation in infected areas.

(2) When a Veterinary Assistant vaccinates or inoculates any animal he may for the purpose of identification also mark such animal in such manner as may be prescribed.

8. (1) Where a Veterinary Assistant, after due examination of an animal and such enquiry into the circumstances of the case as may be necessary, is of the opinion that such animal is infective, he may by order in writing direct the owner or person in charge or having control of such animal,—

Compulsory segregation and treatment of animals in infected areas.

(a) to keep it where it is for the time being, or to remove it or allow it to be removed to such place of isolation or segregation as may be specified in the order;

(Section 9.)

(b) to subject it to such treatment as may be specified in the order;

and such owner or person in charge or having control of such animal shall comply with such order:

Provided that where there is no person in charge or having control of the animal and the owner is either unknown and cannot be ascertained without undue delay, or the order cannot be communicated to him without undue delay or the owner or person in charge or having control of the animal fails to comply with the order within such time as in the opinion of the Veterinary Assistant is reasonable, the Veterinary Assistant shall seize the animal and remove it to a place of isolation or segregation and may subject it to such treatment as may be necessary.

(2) If the owner of an animal seized under the proviso to sub-section (1) or his authorised agent applies in the prescribed manner for the return of such animal to his possession, the animal shall be so returned if such owner or his authorised agent pays any expenses, calculated in the prescribed manner, incurred for the upkeep of the animal up to the date of its release:

Provided that on the release of the animal the owner or his authorised agent, as the case may be, shall comply with any order which the Veterinary Assistant may see fit to issue under sub-section (1).

(3) If the owner of an animal seized under the proviso to sub-section (1) or his authorised agent does not apply for the release of the animal under sub-section (2) and the animal is, in the opinion of the Veterinary Assistant, no longer likely to infect any other animals with the contagious disease in respect of which it was seized, the Veterinary Assistant shall send the animal to the nearest cattle pound or deal with it in such other manner as may be prescribed.

(4) Notwithstanding anything in sub-sections (1), (2) and (3) if the Veterinary Assistant, after due examination of any animal, certifies in writing that such animal is affected with any of such contagious diseases as may be prescribed in this behalf, he may destroy the animal or deal with it in such other manner as may be prescribed.

Disinfection of buildings, etc., in infected

9. Subject to such rules as may be prescribed, the Veterinary Assistant may, by order in writing, require the owner, occupier or person in charge of any building, yard, vessel or vehicle in which an infective animal has been kept to have such building, yard, vehicle or vessel disinfected, and the internal fittings thereof and other things found therein to be disinfected or destroyed, in such manner and to such extent as may be specified in the order, and such owner, occupier or person in charge shall comply with such order.

VI of 1944.]

(Sections 10—16.)

10. No person shall organise, promote or hold in any infected area any animal market, animal fair, animal exhibition or other concentration of animals whether for the purpose of sport or trade, without the permission in writing of the Provincial Government or such officer as the Provincial Government may authorise in this behalf.

Prohibition of markets, fairs, etc., in infected areas.

11. If the Veterinary Assistant suspects that any animal is infective he may subject it to such tests as may be prescribed and the owner or person in charge or having control of such animal shall render every facility and assistance to him in carrying out the tests.

Power of Veterinary Assistant to subject infective animal to tests.

12. Subject to such rules as may be prescribed the Veterinary Assistant may make or cause to be made a *post mortem* examination of any animal which at the time of its death was infective or suspected to have been then infective and for this purpose he may cause the carcass of any such animal to be exhumed.

Power of Veterinary Assistant to carry out *post mortem* examinations.

13. (1) Every animal which at the time of its death is infective or suspected to be infective shall be buried at least six feet below the surface of the ground or dealt with in such other manner as may be prescribed.

Manner of burial or disposal of carcasses of infective animals.

(2) Except in the case of the exhumation of a carcass under section 12, no person shall disinter or otherwise remove the carcass of an animal buried in compliance with the provisions of sub-section (1).

14. Whoever brings or attempts to bring into any market, fair, exhibition or other concentration of animals, any animal which he knows or has reason to believe to be infective shall be punished with fine which may extend in the case of a first conviction to fifty rupees and in the case of a second or subsequent conviction to one hundred rupees.

Prohibition on bringing infective animals into any market, fair, etc.

15. Whoever sells or attempts to sell or to transfer in any manner to another person any animal which he knows or has reason to believe to be infective shall be punished with fine which may extend in the case of a first conviction to one hundred rupees and in the case of a second or subsequent conviction to five hundred rupees.

Prohibition of sale or transfer of infective animals.

16. (1) Whoever,—

Penalties.

(a) having reason to believe that an animal is infective fails to give information as required by sub-section (1) of section 3, or

(b) fails to segregate any animal as required by section 4, or

(c) contravenes the provisions of section 6, or

(d) fails to render every facility and assistance to a Veterinary Assistant as required by section 7, or

(Sections 17—20.)

- (e) fails to comply with the order of a Veterinary Assistant made under sub-section (1) of section 8, or
 - (f) fails to comply with an order made under section 9, or
 - (g) organises, holds or promotes, as the case may be, any animal market, animal fair, animal exhibition or other concentration of animals in contravention of the provisions of section 10, or
 - (h) fails to render every facility and assistance to a Veterinary Assistant as required by section 11, or
 - (i) contravenes any of the provisions of section 13,
- shall be punished with fine which may extend to fifty rupees.

(2) If any person having been convicted of an offence punishable under any of the clauses (a) to (i) of sub-section (1) is again guilty of any offence punishable under that clause or is guilty of any offence punishable under any of the remaining said clauses he shall be punished for every such subsequent offence with fine which may extend to one hundred rupees.

Power of
Veterinary
Assistant
to enter
and inspect
land, etc.

17. Subject to such rules, as may be prescribed, a Veterinary Assistant may enter and inspect any land, building or other place or any vessel or vehicle for the purpose of exercising the powers and performing the duties conferred or imposed on him by or under this Act.

Time for
complying
with and
enforce-
ment of
orders.

18. (1) Where by any requisition or order under this Act or under any notification or rule issued thereunder, any person is required to take any measures or to do anything in respect of any property owned or occupied by him or in his charge, a reasonable time shall be specified in such a requisition or order within which such measures shall be taken or such thing shall be done, as the case may be.

(2) If such measures are not taken or such things are not done within the time specified in accordance with the provisions of sub-section (1) the authority issuing the requisition or order may cause the measures to be taken or the thing to be done and the cost thereof shall be recoverable from the person who was required to take such measures or to do such thing as if it were an arrear of land revenue.

Power of
Police
Officer to
arrest
without
warrant.

19. Any Police Officer not below the rank of a Sub-Inspector may at the request in writing of a Veterinary Assistant arrest, without warrant, any person who has been concerned in any offence under this Act.

Cogniz-
ance of
offences.

20. No Court shall take cognizance of any offence under this Act except upon the complaint or report of a Veterinary Assistant.

VI of 1944.]

(Sections 21—24.)

21. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try an offence under this Act. Jurisdiction of Courts.

22. No person shall be entitled to any compensation in respect of the destruction of any animal or thing or of any other loss, injury, detriment or inconvenience caused him by reason of anything done under this Act in good faith. Bar of claim to compensation.

23. No suit, prosecution or other legal proceedings shall lie against any servant of the Crown for anything which is in good faith done or intended to be done under this Act or any rule made thereunder. Indemnity.

24. (1) The Provincial Government may subject to the condition of previous publication make rules¹ for carrying out the purposes of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for,—

- (a) the manner in which a report required in sub-section (4) of section 3 shall be made;
- (b) the manner in which a notification issued under sub-section (1) of section 5 may be published;
- (c) the kinds or classes of animals which shall be vaccinated or inoculated in respect of each contagious disease referred to in sub-section (1) of section 7;
- (d) the manner in which an animal may be marked under sub-section (2) of section 7;
- (e) the manner in which an application under sub-section (2) of section 8 shall be made;
- (f) the manner in which the expense referred to in sub-section (2) of section 8 shall be calculated;
- (g) the manner in which an animal may be dealt with under sub-section (3) of section 8;
- (h) the contagious diseases referred to in sub-section (4) of section 8;
- (i) the rules subject to which a Veterinary Assistant may issue an order under section 9;
- (j) the tests to which an animal may be subjected under section 11;
- (k) the rules subject to which a *post mortem* examination of an animal may be made under section 12;
- (l) the manner in which an animal may be buried under sub-section (1) of section 13;
- (m) the rules subject to which a Veterinary Assistant may take action under section 17.

¹For rules under this Act, see the Bengal Statutory Rules and Orders, 1940.

Bengal Act VII of 1944¹

THE CORONERS AND CRIMINAL PROCEDURE (BENGAL AMENDMENT) ACT, 1944.

[8th February, 1945.]

An Act to amend the Coroners Act, 1871, and the Code of Criminal Procedure, 1898.

IV of 1871.
Act V of
1898.

WHEREAS it is expedient to amend the Coroners Act, 1871, and the Code of Criminal Procedure, 1898, in their application to Bengal in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Coroners and Criminal Procedure (Bengal Amendment) Act, 1944. Short title.

2. The Coroners At, 1871, and the Code of Criminal Procedure, 1898, shall, in their application to ²[West Bengal], be amended in the manner provided in this Act. Amend-
ment of
the
Coroners
Act, 1871,
and Code
of Crimi-
nal Proce-
dure, 1898.

3. To the first paragraph of section 8 of the Coroners Act, 1871, ending with the words "inquire into the cause of death" the following proviso shall be added, namely:— Amend-
ment of
section 8
of Act IV
of 1871.

"Provided that, unless the Provincial Government otherwise directs, no such inquiry shall be held in the case where the death of any person has been caused by enemy action."

4. To sub-section (1) of section 174 of the Code of Criminal Procedure, 1898, the following proviso shall be added, namely:— Amend-
ment of
section 174
of Act V
of 1898.

"Provided that, unless the Provincial Government otherwise directs, it shall not be necessary under this sub-section. in any case where the death of any person has been caused by enemy action, to make any investigation or to draw up any report or to send any intimation to a Magistrate empowered to hold inquests."

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 9th December, 1943; for the proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 8th and the 24th February, 1944; for proceedings of the Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 22nd November, 1944.

²See footnote 2 on p. 1, ante.

Bengal Act XII of 1946¹

THE BENGAL SPECIAL TRIBUNALS (CONTINUANCE) ACT, 1946.

[30th September, 1946.]

An Act to provide for the continuance of the Special Tribunals at Calcutta constituted under the Criminal Law Amendment Ordinance, 1943.

Ord. No.
XXIX of
1943.

WHEREAS by notifications of the Central Government under section 3 of the Criminal Law Amendment Ordinance, 1943, two Special Tribunals were constituted to sit at Calcutta, and under section 5 thereof certain cases were allotted to them for trial;

AND WHEREAS upon the expiration of a period of six months after the Proclamation of Emergency in force at the commencement of the said Ordinance has ceased to operate, doubts may arise as to the competency of the said Tribunals to continue to function and dispose of the cases not disposed of before the expiration of the said period;

AND WHEREAS it is necessary that the said Tribunals should so continue to function and dispose of the said cases;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Special Tribunals (Continuance) Act, 1946.

Short title
and com-
mence-
ment.

(2) It shall come into force on the 1st day of October, 1946.

2. In this Act,—

Definitions.

(1) “the Ordinance” means the Criminal Law Amendment Ordinance, 1943;

(2) “the Tribunals” means the Special Tribunals sitting at Calcutta known as the First Special Tribunal at Calcutta and the Second Special Tribunal at

Page 305—

In sub-section (1) of section 3, for the words “an Act of the Provincial Legislature” substitute the words “a Provincial Act or a State Act”.

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

of section 5 shall continue in force and apply to the Tribunals and the cases aforesaid, subject to the modification that the powers of the Central Government under

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 20th July, 1946; for proceedings of the Bengal Legislative Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 17th September, 1946.

[Ben. Act XII of 1946.]

(Section 3.)

clause (b) of section 3, sub-section (3) of section 4 and section 11 shall, as from the commencement of this Act, be powers of the Provincial Government.

(3) All notifications issued, all appointments and all rules made, by the Central Government under section 3, sub-section (3) of section 4 and section 11, respectively, of the Ordinance shall, so far as they apply to the Tribunals, continue in force until superseded or modified by the Provincial Government under this Act.

(4) For the avoidance of doubt it is hereby declared that all proceedings had before, and all orders issued by, the Tribunals under the Ordinance before the commencement of this Act shall continue to have effect, and it shall not be necessary for the Tribunals to recommence any of the said proceedings or re-issue any of the said orders.

Bengal Act XIV of 1946¹

THE CALCUTTA DISTURBANCES COMMISSION OF ENQUIRY ACT, 1946.

[12th October, 1946.]

An Act to vest a Commission of Enquiry with certain powers.

WHEREAS a Commission of Enquiry has been appointed to enquire into and report on the causes of and the measures taken to deal with the disturbances which occurred in the town and neighbourhood of Calcutta in the month of August, 1946;

AN, WHEREAS it is expedient to vest the said Commission of Enquiry with powers of a Civil Court;

It is hereby enacted as follows:—

1. (1) This Act may be called the Calcutta Disturbances Commission of Enquiry Act, 1946. Short title
and extent.

(2) It extends to the whole of ²[West Bengal].

2. The Commission of Enquiry appointed under the Resolution of the Government of Bengal in the Home Department, No. 4309P., dated the 11th September, 1946, as amended from time to time (hereinafter referred to as the Commission) shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. The Commission shall furthermore have the same powers of dealing with contempt of the Commission or any of its members or of, or in respect of, any proceedings of the Commission as if the Commission were a High Court established by Letters Patent. Powers of
Commis-
sion of
Enquiry.

Act V of
1898.

3. Except in a prosecution for giving false evidence, no statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceedings: Statements
made by
persons to
the Com-
mission.

Provided that such statement—

- (a) is one which the Commission permits or requires to be made before it by such person; and
- (b) is relevant to the subject matter of the inquiry.

¹For Statement of Objects and Reasons see the *Calcutta Gazette, Extraordinary*, dated the 11th September, 1946; for proceedings of the Assembly see the proceedings of the meeting of the Bengal Legislative Assembly held on the 28th September, 1946.

²See footnote 2 on p. 1, *ante*.

Bengal Act XV of 1946¹

THE MURSHIDABAD ACT, 1946.

[21st November, 1946.]

An Act to provide for the payment of certain allowances to certain members of the family of the Nawab Bahadur of Murshidabad and to create a charge on the agricultural lands of the Nawab Bahadur for payment of the said allowances.

WHEREAS it is expedient to provide for the payment of certain allowances to certain members of the family of the Nawab Bahadur of Murshidabad and to create a charge on the agricultural lands of the Nawab Bahadur for such payment;

It is hereby enacted as follows:—

1. This Act may be called the Murshidabad Act, 1946. Short title.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

- (a) “daughter” means a legitimate daughter;
- (b) “deceased” Nawab Bahadur” means any person who was Nawab Bahadur of Murshidabad during any time after the year 1906, but who has ceased to be so by death or otherwise;
- (c) “Indenture” means the Indenture set forth in the schedule to the Murshidabad Act, 1891;
- (d) “Nawab Bahadur” means the Nawab Bahadur of Murshidabad for the time being;
- (e) “son” means a legitimate son;
- (f) “younger son” means a son of a deceased Nawab Bahadur other than the son who has succeeded to the titles of the Nawab Bahadur of Murshidabad and Amir-ul-Omrah.

3. (1) Notwithstanding anything contained in the Murshidabad Act, 1891, and the Indenture included in and confirmed by the said Act—

- (a) each daughter of a deceased Nawab Bahadur shall be entitled to receive a monthly allowance of two hundred and fifty rupees,
- (b) each younger son of a deceased Nawab Bahadur shall be entitled to receive a monthly allowance of one thousand eight hundred rupees,
- (c) the sons and daughters (if any) of a deceased younger son of any deceased Nawab Bahadur shall be entitled to monthly allowances which in the aggregate shall equal six hundred rupees, the sons receiving equal allowances and the daughters receiving equal allowances and each son receiving double the allowance of each daughter,

in the manner provided in sub-section (2), and the said allowances shall be payable to the said persons out of the income of the agricultural lands of the Nawab Bahadur mentioned in the schedules annexed to the Indenture and of

Allow-
ances to
daughters
and
younger
sons, and
children
of a
deceased
younger
son, of
a deceased
Nawab
Bahadur
and the
charging
of agri-
cultural
lands of
the Nawab
Bahadur
for pay-
ment
thereof.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 19th September, 1946; for proceedings in the Bengal Legislative Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 28th September, 1946.

(Sections 4, 5.)

any agricultural land added whether before or after the commencement of this Act to the said schedules under sub-section (1) of section 3 of the Murshidabad Act, 1891, and all the agricultural lands so mentioned in or added to the said schedules are hereby charged with the due payment of the said allowances: XV of 1891.

Provided that if in any year the total amount of allowances payable under clauses (a), (b) and (c) exceeds the sum of one lakh of rupees, then in each such year the allowances payable to the persons specified in clause (b) shall be reduced ratably in order that such total may not exceed one lakh of rupees.

(2) The allowances mentioned in clauses (a), (b) and (c) of sub-section (1) shall,—

(a) in the case of a daughter or younger son of a deceased Nawab Bahadur, be payable monthly commencing from the time when the deceased Nawab Bahadur ceased to be Nawab Bahadur of Murshidabad and shall continue to be payable until the said daughter or younger son, as the case may be, dies, and

(b) in the case of a son or daughter of a deceased younger son of any deceased Nawab Bahadur, be payable monthly commencing from the time of decease of the said younger son or the time when the deceased Nawab Bahadur ceased to be Nawab Bahadur of Murshidabad, whichever is later, and shall continue to be payable until the said son or daughter, as the case may be, of the said younger son dies.

Alienations, etc., of or in anticipation of, allowances to be void and exemption of allowances from attachment.

4. (1) Notwithstanding anything contained in any other law for the time being in force, all alienations (by sale, gift, assignment or other forms of transfer), agreements, securities or charges of any kind made or created by any person entitled to any allowance under sub-section (1) of section 3 in respect of the said allowance, whether or not such allowance has become payable at or before the date on which such alienations, agreements, securities or charges are made or created, shall be void and of no effect and the allowance shall be payable as if no such alienations, agreements, securities or charges have been made or created.

(2) No allowance payable under section 3 shall, whether it has become so payable or not, be liable to attachment under any process of any Court.

Amendment of section 7 of Act XXIII of 1933.

5. In sub-section (1) of section 7 of the Murshidabad Estate Administration Act, 1933,—

XXIII of 1933.

(a) after clause first, the following clause shall be inserted, namely:—

“Secondly, the allowances, if any, payable under section 3 of the Murshidabad Act, 1946,” and

XV of 1946.]

(Section 6.)

(b) for the words "*secondly*", "*thirdly*" and "*fourthly*"
the words "*thirdly*", "*fourthly*" and "*fifthly*"
shall respectively be substituted.

Ben. Act
XV of
1945.

6. The Murshidabad Act, 1945, is hereby repealed.

Repeal of
Bengal Act
XV of
1945.

Bengal Act I of 1947¹

THE BENGAL ORDINANCES TEMPORARY ENACTMENT ACT, 1947.

[16th March, 1947.]

An Act to enact temporarily the provisions of certain Ordinances promulgated by the Governor of Bengal.

26 Geo.
V, c. 2.

WHEREAS the Ordinances specified in the schedule which have been promulgated by the Governor of Bengal under section 88 of the Government of India Act, 1935, are, by virtue of clause (a) of sub-section (2) of that section, temporary in their duration;

AND WHEREAS it is expedient to provide for the temporary enactment as in this Act mentioned of the provisions contained in those Ordinances;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Ordinances Short title. Temporary Enactment Act, 1947.

2. The provisions of each of the Ordinances specified in the Schedule shall have effect as if they had been enacted in an Act of the Provincial Legislature and shall continue in operation for a period of six months from the date on which the said Ordinances by virtue of clause (a) of sub-section (2) of section 88 of the Government of India Act, 1935, cease to operate:

Temporary
enactment
of provi-
sions of
certain
Bengal
Ordinan-

Provided that the Provincial Government may, by notification in the *Official Gazette*, direct that the provisions of any of the Ordinances specified in the schedule shall continue in operation for a further period not exceeding six months if in the opinion of the Provincial Government it is necessary in the public interest so to do.

The Schedule.

(See section 2.)

Ordinances promulgated by the Governor of Bengal under section 88 of the Government of India Act, 1935.

Year.	Number.	Short title
1946	II	... The Bengal Civic Gurds and Collective Fines Continuance Ordinance, 1946.
1946	III	... The Bengal Molasses Control Ordinance, 1946.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 23rd January, 1947, Part IVA, page 5; for proceedings in the Bengal Legislative Assembly, see the proceedings of the Bengal Legislative Assembly held on the 11th, 12th and 24th February, 1947; and for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 28th February, 10th, 11th, 12th and 13th March, 1947.

[Ben. Act XI of 1947.]

(The Schedule.)

Year.	Number.	Short title
1946	IV ...	The Bengal Drugs Control Continuance Ordinance, 1946.
1946	V ...	The Calcutta Rent Ordinance, 1946.
1946	VI ...	The Bengal Special Powers Ordinance, 1946.
1946	VII ...	The Bengal Consumer Goods Control Ordinance, 1946.
1946	VIII ...	The Dacca Area Security Ordinance, 1946.
1946	XI ...	The Bengal Jute Mills (Temporary Provision) Ordinance, 1946.
1947	I ...	The Bengal Criminal Law Amendment Ordinance, 1947.
1947	III ...	The Bengal Civil Pioneer Force Ordinance, 1947.

Bengal Act IV of 1947¹

THE CATTLE-TRESPASS (BENGAL AMENDMENT) ACT, 1947.

[12th June, 1947.]

An Act further to amend the Cattle-trespass Act, 1871, in its application to Bengal.

I of 1871. WHEREAS it is expedient further to amend the Cattle-trespass Act, 1871, in its application to Bengal in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Cattle-trespass (Bengal Amendment) Act, 1947. Short title.

2. The Cattle-trespass Act 1871, hereinafter referred to as the said Act, shall, in its application to ²[West Bengal], be amended in the manner provided in this Act. Application of Act.

Ben. Act V of 1934. 3. For section 32 of the said Act as inserted by section 3 of the Cattle-trespass (Bengal Amendment) Act, 1934, the following sections shall be substituted, namely:— Substitu- tion of new sections 32 and 33 for section 32 of Act I of 1871.

Ben. Act XV of 1932. Ben. Act V of 1919. “32. (1) The Magistrate of the District may appoint Power for Magistrate of the District to appoint Chairmen of Municipalities or Presidents of Union Boards to discharge the functions of an officer under section 14. Chairman of a Municipality constituted under the Bengal Municipal Act, 1932, or a President of a Union Board constituted under the Bengal Village Self-Government Act, 1919, to discharge the functions of an officer appointed under section 14, in respect of cattle impounded within the area included within that municipality or within the area subject to the jurisdiction of that Union Board, as the case may be:

Provided that a Chairman or President so appointed may, by general or special order, delegate to the Vice-Chairman of such municipality or the Vice-President of such Union Board, as the case may be, all or any of the functions of an officer appointed under section 14 which such Chairman or President is entitled to discharge and may at any time withdraw the same.

(2) A Chairman or President so appointed, or a Vice-Chairman or Vice-President to whom the Chairman or the President, as the case may be, may have delegated all or any of the functions referred to in sub-section (1), shall not, directly or indirectly, purchase any cattle at a sale under this Act.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 22nd July, 1946; for the proceedings of the Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 19th April, 1947.

²See foot-note 2 on p. 1, ante.

(Section 4.)

33. The Magistrate of the District may, by an order
Delegation of certain in writing, delegate the powers speci-
powers of the Magis- fied below to any Magistrate sub-
trate of the District. ordinate to him—

- (1) the determination of the manner of disposal of
unclaimed impounded cattle under the proviso to
section 14; and
- (2) the settlement of claims in respect of surplus
unclaimed proceeds of the sale of cattle held in
deposit under section 17."

Repeal of Bengal Act V of 1934. 4. The Cattle-trespass (Bengal Amendment) Act, 1934,
is hereby repealed.

West Bengal Act III of 1947¹

THE WEST BENGAL DISTRICT BOARDS ACT, 1947.

[30th December, 1947.]

An Act to provide for the dissolution and constitution of certain district boards.

WHEREAS under the award of the Boundary Commission parts of the districts of Jalpaiguri, Malda, Nadia and Dinajpur have been excluded from the Province of West Bengal;

AND WHEREAS the new districts of ²[Nadia], West Dinajpur, Malda and Jalpaiguri have been constituted comprising respectively the parts of the former districts of Nadia, Dinajpur, Malda and Jalpaiguri which have been included within West Bengal under the said award;

AND WHEREAS it is expedient to provide for the dissolution and constitution of certain district boards;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal District Boards Act, 1947.

Short title and commencement.

West Ben.
Ord. XI
of 1947.

(2) It shall come into force on the date on which the West Bengal District Boards Ordinance, 1947, ceases to operate.

2. In this Act, the expression "Boundary Commission" means the Boundary Commission referred to in the Indian Independence Act, 1947.

Definition.

10 & 11,
Geo. VI,
c. 30.

Ben. Act.
III of
1885.

3. Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885 or in any other law for the time being in force, on and from the date on which the award of the Boundary Commission came into force the district boards of the districts of Nadia, Dinajpur, Malda and Jalpaiguri constituted under the said Act shall be deemed to have been dissolved and every member of each such board shall be deemed to have ceased to hold office as such member in so far as such boards had authority over any area included within West Bengal under the said award.

Dissolution of certain district boards.

4. (1) Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885 or in any other law for the time being in force, the Provincial Government may, by notification in the *Official Gazette*, constitute district boards of the districts of ²[Nadia], West Dinajpur, Malda and Jalpaiguri in such manner and consisting of such number of members as it may determine in this behalf.

Constitution of certain district boards.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 15th November, 1947, Part IV, page 243; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 26th November, 1947.

²This word was substituted for the word "Navadwip" by the West Bengal District Boards (Amendment) Act, 1948 (West Bengal Act XV of 1948).

(Sections 5—7.)

(2) The district boards constituted under sub-section (1) shall be deemed to have been constituted on and from the

***Page 318—**

Term of office of members *In the proviso to section 5, for the words "two years and six months", substitute the words "three years and four months".*

*This amendment came into force on the date on which West Bengal Ordinance II of 1950 ceased to operate.

(Substituted by the West Ben. Act III of 1950, section 2.)

Saving

[No. 45, dated the 2nd December, 1950.]

or any proceedings commenced by or against the district
Page 318—

In the proviso to section 5 for the words "three years and four months" substitute the words "four years, four months and fifteen days".

(Substituted by West Ben. Act LIII of 1950, section 2.)

[No. 46, dated the 9th November, 1951.]

constituted as if such boards had been constituted and in existence at the time when such rules, by-laws, notifications or directions were issued, thing done, action taken, suit instituted or proceedings commenced.

Continuance of action taken under West Bengal Ordinance XI of 1947.

7. Any notification issued or anything done or any action taken in exercise of any power conferred by the West Bengal District Boards Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act as if this Act had commenced on the 1st day of November, 1947.

West Ben.
Ord. XI
of 1947.

¹See foot-note 2 on p. 317, *ante*.

West Bengal Act IV of 1947¹

THE WEST BENGAL DISTRICT SCHOOL BOARDS ACT, 1947.

[30th December, 1947.]

An Act to provide for the dissolution and constitution of certain district school boards.

WHEREAS under the award of the Boundary Commission parts of the districts of Jalpaiguri, Malda, Nadia and Dinajpur have been excluded from the Province of West Bengal;

AND WHEREAS the new districts of ²[Nadia], West Dinajpur, Malda and Jalpaiguri have been constituted comprising respectively the parts of the former districts of Nadia, Dinajpur, Malda and Jalpaiguri which have been included within West Bengal under the said award;

AND WHEREAS it is expedient to provide for the dissolution and constitution of certain district school boards;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal District School Boards Act, 1947.

Short title
and com-
mence-
ment.

West Ben.
Ord. XII
of 1947.

(2) It shall come into force on the date on which the West Bengal District School Boards Ordinance, 1947, ceases to operate.

2. In this Act, the expression "Boundary Commission" means the Boundary Commission referred to in the Indian Independence Act, 1947.

Definition.

10 & 11,
Geo. VI,
c. 30.

3. Notwithstanding anything contained in the Bengal (Rural) Primary Education Act, 1930, or in any other law for the time being in force, on and from the date on which the award of the Boundary Commission came into force the District School Boards of the districts of Nadia, Dinajpur, Malda and Jalpaiguri constituted under the said Act shall be deemed to have been dissolved and every member of each such board shall be deemed to have ceased to hold office as such member in so far as such boards had authority over any area included within West Bengal under the said award.

Dissolu-
tion of
certain
district
school
boards.

Ben. Act
VII of
1930.

4. (1) Notwithstanding anything contained in the Bengal (Rural) Primary Education Act, 1930, or in any other law for the time being in force, the Provincial Government may, by notification in the *Official Gazette*, constitute district school boards of the districts of ²[Nadia], West

Constitu-
tion of
certain
district
school
boards.

¹For Statement of Objects and Reasons see *Calcutta Gazette, Extraordinary*, dated the 20th November, 1947, Part IVA, page 313; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 26th November, 1947.

² This word was substituted for the word "Navadwip" by the West Bengal District School Boards (Amendment) Act, 1948 (West Bengal Act XXXIV of 1948).

320 *The West Bengal District School Boards Act,
1947.*

[West Ben. Act IV of 1947.]

(Sections 5—7.)

Dinajpur, Malda and Jalpaiguri in such manner and consisting of such number of members as it may determine in this behalf.

(2) The district school boards constituted under sub-section (1) shall be deemed to have been constituted on and from the date on which the award of the Boundary Commission came into force.

Term of
office of
members.

5. The Provincial Government may, by notification in the *Official Gazette*, fix the term of office of members of the district school boards constituted under section 4 for such period as the Provincial Government may think proper.

Savings.

6. Any regulations made or directions issued or anything done or any action taken or any suit instituted or any proceedings commenced by or against the district school boards dissolved under section 3 in relation to the areas comprised in the districts of '[Nadia], West Dinajpur, Malda and Jalpaiguri before the publication of the notification constituting the district school boards of the said districts under sub-section (1) of section 4 shall be deemed to have been made, issued, done, taken, instituted or commenced, as the case may be, by or against respective district school boards as so constituted as if such boards had been constituted and were in existence at the time when such regulations were made, directions issued, thing done, action taken, suit instituted or proceedings commenced.

Continu-
ance of
action
taken
under
West
Bengal
Ordinance
XII of
1947.

7. Any notification issued or anything done or any action taken in exercise of any power conferred by the West Bengal District School Boards Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act as if this Act had commenced on the 6th day of November, 1947.

West Ben.
Ord. XII
of 1947.

¹See footnote 2 on p. 319, ante.

West Bengal Act V of 1947

THE WEST BENGAL PREMISES REQUISITION AND CONTROL (TEMPORARY PROVISIONS) ACT, 1947.

CHAPTER I.

PRELIMINARY.

Section.

1. Short title, commencement, extent and duration.
2. Definitions.

CHAPTER II.

REQUISITION OF PREMISES FOR ANY PUBLIC PURPOSE.

3. Power to requisition.
4. Power to order vacation of premises or for execution of repairs.
5. Easement, etc., not to be disturbed.
6. Disposal of premises after requisition.
7. Power to evict from requisitioned premises for breach of terms of tenancy.
8. Appeal.
9. Non-compliance with orders.
10. Release from requisition.

CHAPTER III.

PROVISIONS REGARDING COMPENSATION.

11. Procedure for fixing compensation.
12. Matters to be considered in fixing compensation by agreement
13. Persons with whom agreement is to be entered into.
14. Deposit of compensation in case of dispute.

CHAPTER IV.

CONTROL OF VACANT PREMISES.

15. Application of the chapter.
16. Restrictions on lease.
17. Notice by landlord.
18. Procedure of letting out premises by the Collector.
19. Vacant premises may be requisitioned.

CHAPTER V.

MISCELLANEOUS.

20. Penalty.
21. Saving as to orders.
22. Protection of action taken under this Act.
23. Repeal and saving.
24. Power to make rules.

West Bengal Act V of 1947¹

THE WEST BENGAL PREMISES REQUISITION AND CONTROL (TEMPORARY PROVISIONS) ACT, 1947.

[1st January, 1948.]

Page 323— *vide* for the requisition and control of premises

For sub-section (4) of section 1, substitute the following sub-section, namely:—

“(4) It shall remain in force up to the 31st day of March, 1953.”

(Substituted by West Ben. Act XV of 1950, section 2.)

[No. 45, dated the 2nd December, 1950.]

Page 323—

In sub-section (4) of section 1, for the words “the 31st day of March, 1954” substitute the words “the 31st day of March, 1957”. hort
tle,
minence-
ent,
tent and
ration.

(Substituted by West Ben. Act VII of 1954, section 2.)

[No. 53, dated the 11th June, 1954.]

[No. 50, dated the 11th June, 1954.] It shall remain in force for periods not exceeding in the aggregate three years.

2. In this Act, unless there is anything repugnant in the subject or context— Definitions.

(a) “Calcutta” has the same meaning as in clause (11) of section 3 of the Calcutta Municipal Act, 1923;

(b) “Collector” means in Calcutta, the First Land Acquisition Collector and elsewhere, the Collector of a district or any other officer appointed by the Provincial Government to discharge the functions of a Collector under this Act;

(c) “landlord” means any person who for the time being is receiving, or is entitled to receive, the rent of any premises whether on his own account, or on account or on behalf or for the benefit, of any other person, or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the

Ben.
Act III
of 1923.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 19th November, 1947, Part IV, page 271; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly of the 26th November, 1947.

²The Act came into force from the date on which the West Bengal Premises (Requisition and Eviction) Ordinance, 1947 (West Bengal Ordinance No. X of 1947), ceased to operate, *vide* notification No. 1L-Ref., dated the 1st January, 1948, published at page 2 of the *Calcutta Gazette, Extraordinary*, of the 1st January, 1948.

**324 The West Bengal Premises Requisition and Control
(Temporary Provisions) Act, 1947.**

[West Ben. Act

(Chapter I—Preliminary—Chapter II—Requisition of
premises for any public purpose—Section 3.)

premises were let to a tenant and includes a legal representative, as defined in the Code of Civil Procedure, 1908, a tenant who sublets any premises, and every person from time to time deriving title under a landlord; Act V of 1908.

(d) "persons interested" means any person claiming an interest in compensation payable on account of requisition of any premises under this Act;

(e) "premises" means any building or part of a building or any hut or part of a hut which is, or is intended to be, let separately for residential or non-residential purposes and includes,—

(i) the garden, grounds and out-houses (if any) appertaining to such building or part of a building or hut or part of a hut; and

(ii) any furniture supplied by the landlord for use in such building or part of a building;
and also includes a room or rooms in an hotel,
boarding house or hotel; not
ent
in

Page 324—

After clause (f) of section 2, insert the following clause, of
namely:—

"(ff) 'public purpose' does not include a purpose of the local
Union,".

Ben. Act
III of 1923.

(Inserted by West Ben. Act VII of 1954, section 3.) use

[No. 53, dated the 11th June, 1954.] old

representative as defined in the Code of Civil Procedure, 1908, and a person continuing in possession after the termination of a tenancy in his favour. gal

CHAPTER II.

REQUISITION OF PREMISES FOR ANY PUBLIC PURPOSE.

Power to
requisition.

3. (1) Whenever it appears to the Provincial Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises:

Provided that no premises exclusively used for the purpose of religious worship shall be requisitioned under this section.

(2) An order under sub-section (1) shall be served on the landlord, and where it relates to premises in occupation of a tenant also on such tenant in such manner as may be prescribed.

(3) The Provincial Government may, with a view to requisitioning any premises under sub-section (1), by order,—

(a) require any person to furnish to such authority as may be specified in the order, such information in his possession relating to the premises as may be so specified;

In section 3, for clause (b) of sub-section (3), substitute the following clause, namely:—

“(b) direct that until the expiry of such period not exceeding three months as may be specified in the order, the landlord, the tenant or any other person in occupation of the premises shall not let out the premises without the permission of the State Government or such other authority as may be specified in the order.”

(Substituted by West Ben. Act VII of 1954, section 4.)

[No. 53, dated the 11th June, 1954.]

Government shall direct the Collector to take such further action as is necessary in connection with the requisitioning of the premises in accordance with the provisions of this Act.

(5) Without prejudice to any other powers conferred by this Act, the Collector may authorise any person to enter and inspect any premises between sunrise and sunset for the purpose of determining whether, and if so in what manner, an order under this section should be made in relation to any premises or with a view to securing compliance with any order made under this Act.

(6) In connection with any inquiry under this Act the Collector may by written order require any person to produce for his inspection any documents relevant to the inquiry at such time and place, as may be specified in the order, and enforce the attendance of witnesses or compel the production of documents by the same means, and so far as may be, in the same manner as is provided in the case of a court by the Code of Civil Procedure, 1908.

Act V of
1908.

4. Where any premises are requisitioned under this Act, the Collector may by notice in writing—

(a) order the existing tenant or occupier, if any, to vacate the premises within ten days of the receipt of the notice;

(b) order the landlord to execute such repairs as may be specified in the notice within such time as may be specified therein;

(c) if a landlord fails to execute any repairs in pursuance of an order under clause (b) the Collector may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the landlord.

Power to
order
vacation
of
premises
or for
execution
of repairs.

5. No landlord or any contractor, workman or servant employed by him shall without the previous written consent of the Collector or except for the purposes of effecting repairs or complying with a municipal requisition, wilfully disturb any convenience or easement attached to any premises requisitioned under this Act, or remove, destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the premises.

Easement,
etc., not
to be
disturbed.

326 *The West Bengal Premises Requisition and Control
(Temporary Provisions) Act, 1947.*

[West Ben. Act

(Chapter II—Requisition of premises for any public purpose

Page 326—

Page 326—

In section 7, in sub-section (1), for the words "the Collector may, without prejudice to any other action that may lie against such person for the recovery of any rent or other sum referred to in clause (c), which shall be recoverable as a public demand by notice served in the prescribed manner, order such person or any other person found in occupation of the premises to vacate the premises within fourteen days of the service of the notice." substitute the following words, namely:—

• "the Collector may—

- (i) by notice served in the prescribed manner order such person or any other person found in occupation of the premises to vacate the premises within fourteen days of the service of the notice; and*
- (ii) recover as a public demand, the rent or other sum referred to in clause (c), which rent or other sum is hereby declared to be a public demand, without prejudice to any other mode of recovery that may lie therefor."*

(Substituted by West Ben. Act VII of 1954, section 6.)

[No. 53, dated the 11th June, 1954.]

Page 326—

In section 8, after the words "as he thinks fit," insert the words "and after giving such person an opportunity of being heard,".

(Inserted by West Ben. Act VII of 1954, section 7.)

[No. 53, dated the 11th June, 1954.]

Page 326—

In section 9,—

- (1) for the words "clause (a) of section 4", substitute the words "clause (a) of sub-section (1) of section 4";*
- (2) in clause (a) for the word "surrender" substitute the words "delivery of possession"; and*
- (3) in clause (b) for the word "surrender" substitute the words "delivery of possession".*

(Substituted by West Ben. Act VII of 1954, section 8.)

[No. 53, dated the 11th June, 1954.]

Page 326—

For section 10, substitute the following section, namely

**"Release
from
requisition.**

- 10. (1) Where any premises are to be released from requisition made under this Act, the State Government shall, after such inquiry as it deems necessary to make or to cause to be made, specify by order in writing the person to whom delivery of possession of the premises shall be made.**

**The West Bengal Premises Requisition and Control 327
(Temporary Provisions) Act, 1947.**

Page 327—

In sub-section (1) of section 11,—

(1) *for clause (e) substitute the following clause, namely:—*

“(e) the arbitrator in making his award, shall have regard to the matters referred to in clauses (a), (b) and (c) of section 12;” ; and

(2) *in clause (g), after the words “any law for the time being in force” insert the words “relating to arbitration.”.*

(Substituted and inserted by West Ben. Act VII of 1954, section 10.)

[No. 53, dated the 11th June, 1954.]

respective opinions is a fair amount of compensation;

(e) the arbitrator in making his award shall have regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as they can be made applicable;

(f) an appeal shall lie to the High Court against an award of an arbitrator;

(g) save as provided in this section and in any rules made under this Act, nothing in any law for the time being in force shall apply to arbitrations under this section.

I of 1894.

(2) Compensation shall also be paid in respect of any damage done to the premises during the period of requisition other than what may have been sustained by normal wear and tear or by natural causes. When the amount of such compensation can be fixed by agreement, it shall be paid in accordance with such agreement; where no such agreement can be reached, the matter shall be referred to the arbitrator.

12. *[(1)] In determining the amount of compensation which may be fixed by agreement under clause (a) of sub-section (1) of section 11, the Collector shall take into consideration—

(a) the rent payable in respect of the premises;

(b) if, in consequence of the requisition of the premises, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

(c) the damage or loss of income (if any) sustained by the person interested between the date of service of the order under sub-section (1) or under clause (b) of sub-section (3) of section 3, as the case may be, on such person and the date when the Collector takes possession of the premises.

Matters to be considered in fixing compensation by agreement.

(Chapter III—Provisions regarding compensation—Chapter
IV—Control of vacant premises—Sections 13—17.)

Persons
with whom
agreement
is to be
entered
into.

13. The Collector shall enquire into the respective rights of all persons interested in the premises and shall decide whether the compensation shall be paid to any such person periodically or in lump. If the compensation is to be paid periodically the Collector shall, having regard to the terms and conditions under which a tenant may be in occupation of the premises, also decide whether the agreement for payment of compensation referred to in section 11 shall be entered into with such tenant or with the immediate landlord of such tenant.

Deposit of
compensa-
tion in
case of
dispute.

14. When a dispute arises as to the person or persons to whom the amount of compensation or any part thereof is payable or as to the apportionment of the same or any part thereof, the Collector shall keep the amount in revenue deposit, till there has been a settlement of the dispute.

CHAPTER IV.

CONTROL OF VACANT PREMISES.

Applica-
tion of the
chapter.

15. (1) The Provincial Government may, from time to time by notification published in the *Official Gazette*, declare that the provisions of this chapter shall apply to any local area or categories of premises in any local area

Pages 328-329—

Omit the whole of Chapter IV.

(Omitted by West Ben. Act VII of 1954, section 11.)

[No. 53, dated the 11th June, 1954.]

in, declare that this chapter shall cease to apply in any local area or categories of premises in any area.

Restric-
tions on
lease.

16. After the issue of notification under sub-section (1) of section 15, no landlord shall let out his premises in any manner except as provided in this chapter.

Notice by
landlord.

17. (1) The landlord of any premises shall, within seven days after such premises falls vacant by reason of his ceasing to occupy such premises or by the termination of a tenancy in respect of such premises, give notice thereof to the Collector in the prescribed form and manner:

Provided that the notice in respect of premises lying vacant at the date of notification under sub-section (1) of section 15 shall be given within fifteen days of such date, notwithstanding any agreement that may have been made with any person previous to the date of such notification for letting out the premises.

(2) The landlord shall also give a similar notice to the Collector in respect of any vacant premises which he does not intend to let out to tenants stating the reasons thereof, and the Collector shall decide whether or not the premises shall be let out.

V of 1947.]

(Chapter IV—Control of vacant premises—Chapter V—
Miscellaneous—Sections 18—21.)

18. (1) On receipt of the notice under section 17, the Collector shall, in pursuance of any directions that the Provincial Government may give in this behalf from time to time, and after making such inquiry as he considers necessary, select a person to be inducted as a tenant in the premises and direct the landlord by a written order to put such person in possession of the premises on payment of one month's rent to the landlord as may be specified in the order:

Procedure of letting out premises by the Collector.

Provided that the amount specified in the order as rent which the tenant has paid under this sub-section shall not be deemed to be the sum payable as rent in respect of such premises if it is in excess of what is permissible under the law for the time being in force, and the tenant shall be entitled to apply to the appropriate authority for fixation of fair and equitable rent in respect of such premises.

(2) Where the Collector does not find a tenant suitable for the premises within two weeks after the receipt of notice under section 17, he shall issue a permit in the prescribed form to the landlord allowing him to use or deal with such premises as he may think fit.

(3) If the landlord fails to comply with an order made under sub-section (1), the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient.

19. Notwithstanding anything contained in section 18, any premises in respect of which notice has been given under section 17 may be requisitioned under the provisions of this Act.

Vacant premises may be requisitioned.

CHAPTER V.

MISCELLANEOUS.

20. (1) Whoever contravenes any provision of this Act, or fails or neglects to obey any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

Penalty.

(2) No court shall take cognizance of any offence punishable under sub-section (1) except on the complaint in writing of the Collector.

21. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

Saving as to orders.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall presume, within the meaning of the Indian Evidence Act, 1872, that such order was so made by that authority.

**330 The West Bengal Premises Requisition and Control
(Temporary Provisions) Act, 1947.**

[West Ben. Act V of 1947.]

(Chapter V—Miscellaneous—Sections 22—24.)

Protection
of action
taken
under this
Act.

22. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) Save as is otherwise expressly provided in this Act no suit or other legal proceeding shall lie against the Provincial Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

Repeal and
saving.

23. (1) On the expiry of the West Bengal Premises (Requisition and Eviction) Ordinance, 1947, the provisions of section 8 of the Bengal General Clauses Act, 1899, shall apply as if it were an enactment then repealed by a West Bengal Act.

West Ben.
Ord. X of
1947.
Ben. Act I
of 1899.

(2) Any rules, orders and appointments made or anything done or any action taken or any proceedings commenced under any of the provisions of the said Ordinance shall continue in force in so far as they are consistent with this Act and shall be deemed to have been made, done, taken or commenced under the corresponding provision of this Act.

Power
to make
rules.

24. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

Page 330— of the orders referred to in

In sub-section (2) of section 24, omit clauses (e) and (f).
(Omitted by West Ben. Act VII of 1954, section 12.)

[No. 53, dated the 11th June, 1954.]

(d) the procedure to be followed in arbitrations and appeals under section 11, the period within which such appeals are to be filed, the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal and the fees to be paid to experts and assessors appointed under that section;

(e) the form and manner of service of the notice to the Collector referred to in section 17; and

(f) the form of permit referred to in sub-section (2) of section 18.

West Bengal Act VI of 1947¹

THE WEST BENGAL DISTURBED AREAS ACT, 1947.

[1st January, 1948.]

An Act to make better provision for the suppression of disorder and for the restoration and maintenance of public order in the disturbed areas in West Bengal.

WHEREAS it is expedient to make better provision for the suppression of disorder and for the restoration and maintenance of public order in the disturbed areas in West Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Disturbed Areas Act, 1947. Short title and extent.
(2) It extends to the whole of West Bengal.
2. In this Act “disturbed area” means an area which is for the time being declared by notification under section 3 to be a disturbed area. Definition.
3. The Provincial Government may, by notification in the *Official Gazette*, declare that the whole or any such part of West Bengal as may be specified in the notification is a disturbed area. Power to declare areas to be disturbed areas.
4. Any Magistrate and any Police Officer not below the rank of Assistant Sub-Inspector may, if in his opinion it is necessary so to do for the maintenance of public order, after giving such warning, if any, as he may consider necessary, fire upon or otherwise use force against any person who is acting in contravention of any law or order for the time being in force in a disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons. Power to fire upon persons contravening certain orders.
5. No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Provincial Government, against any person in respect of anything done or purporting to be done in exercise of the powers conferred by section 4. Protection of persons acting under section 4.
6. Any notification issued or anything done or any action taken in exercise of the powers conferred by the Bengal Disturbed Areas Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act as if this Act had commenced on the 5th day of August, 1947. Continuance of action taken under Bengal Ordinance VII of 1947.

Ben. Ord.
VII of
1947.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 21st November, 1947, Part IV, page 331; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 27th November, 1947.

West Bengal Act VII of 1947¹

THE WEST BENGAL CRIMINAL LAW AMENDMENT ACT, 1947.

[1st January, 1948.]

An Act to provide for the more speedy trial and more effective punishment of certain offences.

WHEREAS it is expedient to provide for the more speedy trial and more effective punishment of certain offences;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Criminal Law Amendment Act, 1947.

Short title and commencement.

West Ben. Ord. IX of 1947.

(2) It shall come into force on the date on which the West Bengal Criminal Law Amendment (No. II) Ordinance, 1947, ceases to operate.

2. The Provincial Government may, by notification in the *Official Gazette*, constitute for the purposes of this Act a Special Tribunal or Tribunals to sit at such place or places as may be specified in the notification:

Constitution of Special Tribunal or Tribunals.

Provided that any Special Tribunal may, if it is satisfied that it will tend to the general convenience of parties or witnesses in any particular case, sit for the trial of that case in a place other than the place specified for it.

3. (1) A Special Tribunal constituted under this Act shall consist of three members, each of whom shall be a

Composition of Special Tribunals.

Page 333—

In clause (a) of sub-section (1) of section 3, for the words “sub-section (2) of section 220 of the Government of India Act, 1935,” substitute the words “clause (2) of article 217 of the Constitution”.

(substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

and at least one shall have the qualification specified in clause (a).

(2) The Provincial Government shall appoint one of the members to be the President of the Special Tribunal.

4. (1) The Provincial Government may, from time to time by notification in the *Official Gazette*, allot cases for trial to each Special Tribunal, and may also from time to time by like notification transfer any case from one Special Tribunal to another or withdraw any case from the jurisdiction of a Special Tribunal or make such modifications in the

Cases triable by Special Tribunals.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 17th November, 1947; the Report of the Select Committee was presented to the West Bengal Legislative Assembly on the 8th December, 1947; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meetings of the West Bengal Legislative Assembly held on the 25th November, 8th and 11th December, 1947.

(Section 5.)

description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary.

(2) The Special Tribunals shall have jurisdiction to try the cases for the time being respectively allotted to them under sub-section (1) in respect of such of the charges for offences specified in the Schedule as may be preferred against the several accused and any such case which is at the commencement of this Act or at the time of such allotment pending before any Court or another Special Tribunal shall be deemed to be transferred to the Special Tribunal to which it is so allotted.

(3) When trying any such case as aforesaid, a Special Tribunal may also try any offence whether or not specified in the Schedule which is an offence with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial.

Act V
of 1898.

Procedure
and
powers
of Special
Tribunals.

5. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial, and in trying accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates:

Provided that a Special Tribunal may, for reasons to be recorded in writing, refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice:

Provided further that for the purposes of sub-section (1) of section 356 of the said Code English shall be deemed to be the language of the Court and the Tribunal may decide by which one, if any, of its members the evidence of any or all of the witnesses shall be taken down in writing, and where under the provisions of that sub-section the evidence of witnesses is taken down under the direction and superintendence of the Tribunal but not by a member thereof, the provisions of sub-section (3) of section 356 shall not apply.

(2) Notwithstanding anything contained in section 3, any two members of a Special Tribunal may proceed with the trial of a case during the temporary and unavoidable absence of the third member:

Provided that all three members shall be present when after the evidence has been concluded the prosecutor or the accused or his pleader is addressing the Special Tribunal and when the judgment in the case is delivered.

(3) Save as provided in sub-section (1), the provisions of the Code of Criminal Procedure, 1898, except the provisions of section 196A and of Chapter XXXIII, shall, so far as they are not inconsistent with this Act, apply to proceedings of a Special Tribunal; and for the purposes of the said provisions the Special Tribunal shall be deemed to be a Court of Session, trying cases without a jury, and a person conducting a prosecution before a Special Tribunal shall be deemed to be a Public Prosecutor.

of 1947.]

(Sections 6—9.)

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) In the event of any difference of opinion among the members of a Special Tribunal the opinion of the majority shall prevail.

(6) A Special Tribunal may pass any sentence authorised by law.

Act V
of 1898.

6. The High Court may, subject to the provisions of section 7 regarding the transfer of cases, exercise, so far as they may be applicable all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, on a High Court, as if the Special Tribunal were a Court of Session trying cases without a jury within the local limits of the High Court's jurisdiction. Appeal and revision.

7. No Court shall have authority to transfer any case from a Special Tribunal, or, save as provided in section 6, have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal. Bar of certain jurisdiction.

8. When any person is charged before a Special Tribunal with an offence specified in the Schedule, the fact that such person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that such person has, at or about the time of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Special Tribunal as a relevant fact in deciding whether he is or is not guilty of the particular offence with which he is charged. Special rules of evidence.

Act XLV
of 1860.

9. (1) When any person charged before a Special Tribunal with an offence specified in the Schedule is found guilty of that offence, the Special Tribunal shall, notwithstanding anything contained in the Indian Penal Code, whether or not it imposes a sentence of imprisonment, impose, in addition to such sentence of fine, if any, as it would otherwise have imposed, a further sentence of fine which shall be equivalent to the amount of money or value of other property found to have been procured by the offender by means of the offence. Special provisions regarding punishment.

(2) Except where the offence of which the person is found guilty is an offence specified in item 1 or item 5 of the Schedule, when it appears that the offence has caused loss to more than one Government referred to in the Schedule or local authority, the Special Tribunal shall in its order of conviction record a finding indicating the amount of loss sustained by each such Government or local authority.

(3) When a person is found guilty at the same trial of one or more offences specified in item 1 or item 5 of the Schedule and of one or more offences specified in any of the

(Sections 10—12.)

other items of the Schedule, the Special Tribunal shall in its order of conviction record a finding indicating separately the amounts procured by means of the two classes of offences.

(4) Where an additional fine is imposed under sub-section (1) for an offence, it shall, after deduction of the cost of recovery as determined by the District Magistrate or, in the Presidency-town of Calcutta by the Chief Presidency Magistrate, be credited to the Government (being a Government referred to in the Schedule) or local authority to which the offence has caused loss, or where there is more than one such Government or local authority, be distributed among them in proportion to the loss sustained by each:

Provided that the provisions of this sub-section shall not apply in respect of any additional fine imposed for an offence specified in item 1 or item 5 of the Schedule, or in a case of the nature referred to in sub-section (3), in respect of such portion of the additional fine as is equivalent to the amount found under that sub-section to have been procured by means of offences specified in those items.

(5) Where in any appeal or revisional proceedings against an order of acquittal passed by a Special Tribunal the Appellate Court convicts the accused, the Appellate Court shall in passing sentence impose an additional fine as provided in sub-section (1), and shall where necessary record a finding referred to in sub-section (2) or sub-section (3).

(6) Nothing in this section shall apply to any case to which the provisions of section 12 of the Criminal Law Amendment Ordinance, 1944, apply.

Ord.
XXXVIII
of 1944.

Power to
make
rules.

10. The Provincial Government may make rules providing for—

- (a) the time at which the Special Tribunal or Tribunals may sit;
- (b) the procedure to be adopted in the event of any member of the Special Tribunal being prevented from attending throughout the trial of any accused person; and
- (c) the inspection and grant of copies of records of Special Tribunal or Tribunals and the fees for such inspection and grant.

Applica-
tion of
Act II of
1947 to
trials
under
this
Act.

11. The provisions of the Prevention of Corruption Act, 1947, shall apply to trials under this Act.

II of 1947.

Indemni-
ty.

12. No suit, prosecution or legal proceedings whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

of 1947.]

(Section 13 and the Schedule.)

West Ben.
Ord. IX of
1947.

13. Any rules made or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the West Bengal Criminal Law Amendment (No. II) Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 9th day of October, 1947.

Continu-
ance of
action
taken
under West
Bengal
Ordinance
IX of 1947.

THE SCHEDULE.

[See section 4(2).]

Offences triable by Special Tribunals.

Act XLV
of 1860.

1. An offence punishable under section 161 or section 165 of the Indian Penal Code or any conspiracy to commit or any attempt to commit or any abetment of such offence.

2. An offence punishable under section 406 or section 408 or section 409 of the Indian Penal Code, where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a Provincial Government or a department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

3. An offence punishable under section 411 or section 414 of the Indian Penal Code, where the stolen property in respect of which the offence is committed is property such as is described in the preceding item and in respect of which an offence punishable under section 406 or section 408 or section 409 of the said Code has been committed.

4. An offence punishable under section 417 or section 420 of the Indian Penal Code, where the person deceived is His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a Provincial Government or a department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

XXIV of
1946.

5. An offence punishable under any order made or deemed to be made under the Essential Supplies (Temporary Powers) Act, 1946, or any conspiracy to commit or any attempt to commit or any abetment of such offence.

II of 1947.

6. An offence punishable under section 5 of the Prevention of Corruption Act, 1947.

7. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items 2, 3 and 4.

West Bengal Act IX of 1947¹

THE BENGAL LOCAL SELF-GOVERNMENT (WEST BENGAL AMENDMENT) ACT, 1947.

[5th January, 1948.]

An Act further to amend the Bengal Local Self-Government Act of 1885.

Ben. Act
III of
1885.

WHEREAS it is expedient further to amend the Bengal Local Self-Government Act of 1885 for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Local Self-Government (West Bengal Amendment) Act *^{Short}[of] 1947. ^{title.}

2-9. [*Amendments incorporated in the parent Act.*]

10. Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885— <sup>Transi-
tory pro-
visions..</sup>

(a) all the members of a district board

Page 339—

In sub-section (3) of section 1 for the words and figures "15th day of December, 1950", substitute the words and figures "31st day of December, 1951".

(Substituted by West Ben. Act LI of 1950, section 2.)

[No. 46, dated the 9th November, 1951.]

the Vice-Chairman of the district board, unless he is exercising the powers of the Chairman in his absence, shall also vacate his office as Vice-Chairman on the commencement of †[the] Act:

Provided that the existing Chairman or a Vice-Chairman, if he is exercising the powers of the Chairman in his absence, shall continue in office till a new Chairman is elected or appointed under the provisions of clause (b) or (c) of this section or under section 22 or section 23A of the Act, as the case may be;

(b) a fresh election of the Chairman and Vice-Chairman of the district board from among the elected members shall be held after the commencement of this Act. The District Magistrate shall within a month from the commencement of this Act or such further time as may be allowed by the Provincial Government convene a meeting of the

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 26th November, 1947; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th December, 1947.

*Sic delete "of"—clerical error.

†Sic for "the" read "this"—clerical error.

[West Ben. Act IX of 1947.]

(Section 10.)

elected members for the purpose of electing a Chairman. Seven days' clear notice shall be given of the meeting:

Provided that there shall be no fresh election of the Chairman and the Vice-Chairman under this clause if within a period of fifteen days from the date of commencement of *[the] Act the names of the elected members of the board as a result of a general election held for reconstitution of the board are published in the *Official Gazette*;

- (c) if the elected members fail to elect a Chairman within the time prescribed in clause (b), the Provincial Government shall appoint by name one of the elected members to be the Chairman;
- (d) the number of members of a board shall be deemed to be the total number of elected seats on the board fixed by the existing orders of the Provincial Government until the number is altered by the Provincial Government.

**Sic* for " the " read " this "—clerical error.

West Bengal Act X of 1947¹

THE BENGAL VILLAGE SELF-GOVERNMENT (WEST BENGAL AMENDMENT) ACT, 1947.

[5th January, 1948.]

An Act further to amend the Bengal Village Self-Government Act, 1919.

Ben. Act
V of 1919.

WHEREAS it is expedient further to amend the Bengal Village Self-Government Act, 1919, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. *[The] Act may be called the Bengal Village Self-Government (West Bengal Amendment) Act, 1947. Short title.

2-8. [*Amendments incorporated in the parent Act.*]

Ben. Act.
V of 1919.

9. Notwithstanding anything contained in the Bengal Village Self-Government Act, 1919— Transitory provisions.

(a) all the members of a Union Board appointed before the commencement of this Act under sub-section (3) of section 6 or sub-section (2) of section 57 shall, on the commencement of this Act, vacate their offices and the elected members of the board shall be deemed to constitute the board and the commencement of the term of their office shall be deemed to be the date on which they came into office under the provisions of section 11 of the Act;

the Vice-President of the Union Board, if any, unless he is exercising the powers of the President in his absence shall also vacate his office as Vice-President on the commencement of this Act:

Provided that the existing President or Vice-President of the Union Board if he is exercising the powers of the President in his absence shall continue in office till a new President is elected or appointed under the provisions of clause (b) or (c) of this section or under section 8 of the Act, as the case may be;

(b) a fresh election of the President and Vice-President, if any, of the Union Board from among the elected members shall be held after the commencement of this Act. The District Magistrate shall within a month from the commencement of this Act or such further time as may be allowed by the Provincial Government issue an order on the

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 26th November, 1947; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th December, 1947.

*Sic for "the" read "this"—Clerical error.

342 The Bengal Village Self-Government (West Bengal Amendment) Act, 1947.

[West Ben. Act X of 1947.]

(Section 9.)

Circle Officer or such other person (not being one of the members) as the said Magistrate may select directing him to convene a meeting of the elected members for the purpose of electing a President from among them within one month from the date of the order :

Provided that there shall be no fresh election of the President and Vice-President under this clause, if within a period of fifteen days from the date of the commencement of this Act, the names of the elected members of the board as a result of a general election held for reconstitution of the board are published in the *Official Gazette*;

(c) if the elected members of the Union Board fail to elect a President within the time prescribed in clause (b), the District Board shall appoint an elected member of the Union Board to be the President; and

(d) the number of members of a Union Board shall be deemed to be the total number of elected seats on the board fixed by the existing orders of the Provincial Government until the number is altered by the Provincial Government.

West Bengal Act XI of 1947¹

THE BENGAL MUNICIPAL (WEST BENGAL AMENDMENT) ACT, 1947.

[5th January, 1948.]

An Act further to amend the Bengal Municipal Act, 1932.

Ben. Act
XV of
1932.

WHEREAS it is expedient further to amend the Bengal Municipal Act, 1932, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Municipal (West Bengal Amendment) Act, 1947. Short title.

2-12. *[Amendments incorporated in the parent Act.]*

Ben. Act
XV of
1932.

13. Notwithstanding anything contained in the Bengal Municipal Act, 1932—

Transi-
tory pro-
visions.

(a) all the Commissioners of a municipality appointed before the commencement of this Act under section 16 except those appointed under proviso (2) to section 16 or under section 17 or under clause (ii) of sub-section (2) of section 554 of the Act shall, on the commencement of *~~the~~ Act, vacate their offices and the Commissioners of the Municipality shall be deemed to be constituted of the elected Commissioners only and the commencement of their term of office shall be deemed to be the date on which they came into office under the provision of section 56 of the Act;

the Vice-Chairman of the Municipality, unless he is exercising the powers of the Chairman in his absence, shall also vacate his office as Vice-Chairman on the commencement of this Act;

Provided that the existing Chairman or the Vice-Chairman, if he is exercising the powers of the Chairman in his absence, shall continue in office till a new Chairman is elected or appointed under the provisions of clause (b) or (c) of this section or under section 45 or section 46 of the Act, as the case may be;

(b) a fresh election of the Chairman and the Vice-Chairman of the Municipality from among the elected Commissioners shall be held after the commencement of this Act. The District Magistrate shall within a month from the commencement of this Act or such further time as may be

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 26th November, 1947, Part IV, page 357; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th December, 1947.

*Sic for "the" read "this"—Clerical error.

**344 The Bengal Municipal (West Bengal Amendment)
Act, 1947.**

[West Ben. Act XI of 1947.]

(Section 13.)

allowed by the Provincial Government convene a meeting of the elected Commissioners for the purpose of electing a Chairman. Seven days' clear notice shall be given of the meeting :

Provided that there shall be no fresh election of Chairman and Vice-Chairman under this clause if within a period of fifteen days from the date of the commencement of this Act, the names of the elected Commissioners of the Municipality as a result of a general election held for reconstitution of the Commissioners are published in the *Official Gazette*;

- (c) if the elected Commissioners fail to elect a Chairman within the time prescribed in clause (b), the Provincial Government shall appoint by name one of the elected Commissioners to be the Chairman;
- (d) the number of Commissioners of the Municipality shall be deemed to be the total number of elected seats on the Municipality fixed by the existing orders of the Provincial Government until the number is altered by the Provincial Government.

West Bengal Act II of 1948¹

THE WEST BENGAL LAND (REQUISITION AND Page 345—

In sub-section (4) of section 1, for the words, "the 31st day of March, 1954" substitute the words, "the 31st day of March, 1957".

(Substituted by West Ben. Act VIII of 1954, section 2.)

[No. 53, dated the 11th June, 1954.]

Page 345—

In section 2,—

(1) for clause (a), substitute the following clause, namely:—

"(a) 'Collector' means the Collector of a district and includes a Deputy Commissioner and any officer specially appointed by the State Government to perform the functions of a Collector under this Act;";

(2) in clause (b), omit the word "and" at the end;

(3) after clause (b), insert the following clauses, namely:—

"(b1) 'land' has the same meaning as in the Land I of 1894. Acquisition Act, 1894;

(b2) the expression 'person interested' includes all persons claiming an interest in compensation to be paid on account of the requisition or acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land; and".

(Substituted, omitted and inserted by West Ben. Act VIII of 1954, section 3.)

[No. 53, dated the 11th June, 1954.]

this Act.

3. (1) If in the opinion of the Provincial Government or any person authorised in this behalf by the Provincial Government it is necessary so to do for maintaining supplies and services essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage, the Provincial Government or the person so authorised, as the case may be, may, by order

Power to
requisition.

For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 11th February, 1948, Part IV, page 185; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meetings of the West Bengal Legislative Assembly held on the 18th and the 19th February, 1948.

In section 3,—

(1) *in sub-section (2), for the words “of a tenant also on such tenant” substitute the words “of an occupier, not being the owner of the land, also on such occupier”;* and

(a) *if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or*

(b) *if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (11) of section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him.”.*

West Ben.
Act
XXXII
1951.

(Substituted and added by West Ben. Act VIII of 1954, section 4.)

[No. 53, dated the 11th June, 1954.]

Page 346—

In section 4,—

(1) *for sub-section (1), substitute the following sub-section, namely:—*

“(1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.”; and

(2) *after sub-section (1), insert the following sub-section, namely:—*

“(1a) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the *Official Gazette* that such land is required for a public purpose referred to in sub-section (1) of section 3.”.

(Substituted and inserted by West Ben. Act VIII of 1954, section 5.)

[No. 53, dated the 11th June, 1954.]

Page 346—

In section 5,—

(1) *in sub-section (1),—*

(i) *for the words “sub-section (1) of section 4”, substitute the words “sub-section (1a) of section 4”;* and

(ii) *for the words “to be taken”, substitute the word “acquired”;* and

(2) *in sub-section (2), for the words “Such*

(Substituted by West Ben. Act VIII

[No. 53, dated the 11th June

quisition, the Pro-
h inquiry, if any,
or in writing the
the possession of

Page 347—

In section 6,—

- (1) *in* sub-section (2), *for* the words “to deliver possession to such person as may have rightful claim to possession thereof” *substitute* the words “for any claim for compensation or other claim in respect of such land for any period after the date of delivery”;
- (2) *in* sub-section (3), *for* the words “to whom the possession of any land requisitioned under section 3 is to be delivered” *substitute* the words “specified in the order made under sub-section (1)”;
- (3) *in* sub-section (4), *for* the words “entitled to possession thereof” *substitute* the words “specified in the order made under sub-section (1)”

(ii) *after* that clause—

Pages 347-348—

In section 7,—

- (1) *in* sub-section (1), *after* the word “paid”, *insert* the words “to every person interested”;
- (2) *in* the first proviso to sub-section (1), *for* the words “sub-section (1) of section 4” *substitute* the words “sub-section (1a) of section 4”;
- (3) *omit* the second proviso to sub-section (1);
- (4) *renumber* sub-section (2) as clause (a) of sub-section (2) and—
- (i) *to* that clause as so renumbered *add* the following proviso, namely:—

I of 1894.

“Provided that interest at the rate of six per centum per annum on the amount of compensation under the award from the date of the publication of the notice under sub-section (1a) of section 4 until payment shall be included in the amount payable under the award.”; and

~~“If the person interested in the land does not appear before the Collector when called upon to be present for the purpose of the determination of the compensation, such amount shall be determined as compensation as appears reasonable to the Collector having regard to the facts and circumstances of the case and the Collector shall make an award ordering payment of the compensation so determined;~~

- (iii) *where* there is any disagreement between the Collector and the person interested, the compensation payable shall be the amount determined by the Court on reference made by the Collector under clause (b) of sub-section (1) of section 8.”.

(Inserted, substituted, omitted, renumbered and added by West Ben. Act VIII of 1954, section 8.)

[No. 53, dated the 11th June, 1954.]

Page 348—

In section 8,—

(1) in sub-section (1),—

(i) in clause (a) for the words “any person aggrieved by an award made under sub-section (2) of section 7” substitute the words “any person interested being aggrieved by an award made under sub-section (2) of section 7 or clause (ii) of sub-section (4) of that section”; and

(ii) in clause (b), for the words “and the person to whom possession of any land is delivered under section 6,” substitute the words “and any person interested in compensation,”; and

(2) for sub-section (2), substitute the following sub-section, namely:—

“(2) The provisions of sub-section (2) of section 18 and of sections 19 to 22 and of sections 25 to 28 of the Land Acquisition Act, 1894, and the principles set out in sub-section (1) and in clause (a) of sub-section (2) of section 7 of this Act, shall, so far as they may be applicable, apply in respect of any reference made to the Court under sub-section (1).”

(Substituted by West Ben. Act VIII of 1954, section 9.)

[No. 53, dated the 11th June, 1954.]

Page 348—

In section 9,—

(1) in clause (a), for the word “property” substitute the word “land”; and

(2) omit clause (b).

(Substituted and omitted by West Ben. Act VIII of 1954, section 10.)

[No. 53, dated the 11th June, 1954.]

Page 348—

After section 12 of the said Act, insert the following section, namely:—

“No stamp duty to be paid for award or agreement and no fees to be paid for copies thereof.

12A. No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy thereof.”

(Inserted by West Ben. Act VIII of 1954, section 11.)

[No. 53, dated the 11th June, 1954.]

... provided in this Act, no suit or other legal proceeding shall lie against the Provincial Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

II of 1948.]

(Section 13.)

13. (1) The Provincial Government may make rules for carrying out the purposes of this Act. Power to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) the manner of service of orders on the owner or occupier of land referred to in sub-section (2) of section 3; and
- (b) the manner of service of notice on the persons referred to in sub-section (3) of section 5.

West Bengal Act III of 1948

THE WEST BENGAL SECURITY ACT, 1948.

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West Bengal Act III of 1948¹

THE WEST BENGAL SECURITY ACT, 1948.

[13th March, 1948.]

An Act to make special provision for the maintenance of public order by the prevention of illegal acquisition, possession or use of arms, the suppression of subversive movements endangering communal harmony or the safety or stability of the Province, the suppression of goondas and for maintaining supplies and services essential to the life of the community.

WHEREAS it is expedient to make special provision for the maintenance of public order by the prevention of illegal acquisition, possession or use of arms, the suppression of subversive movements endangering communal harmony or the safety or stability of the Province, the suppression of goondas and for maintaining supplies and services essential to the life of the community;

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the West Bengal Security Act, 1948.

(2) It extends to the whole of West Bengal.

²(3) The Provincial Government may, by notification, direct that all or any of the provisions of this Act shall come into force in the whole or in any part of the Province of West Bengal on such date as may be specified in the notification and may, by like notification, direct that the said provisions or any of them shall cease to be in force in the said Province or part, as the case may be, on such date as may be specified in the notification.

(4) It shall, in the first instance, remain in force for a period of one year; provided that if a resolution in that behalf is, before the date on which under this sub-section it would otherwise have ceased to operate, passed by the Provincial Legislature, it shall continue in force for a further period of one year from such date.

Short
title,
extent,
com-
mence-
ment
and
duration.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 21st November, 1947, Part IV, pages 317-330; and for report of the Select Committee, see *Calcutta Gazette*, dated the 18th December, 1947, Part IV, pages 7-26; and for proceedings in the West Bengal Legislative Assembly, see the West Bengal Legislative Assembly Proceedings, First Session (November-January, 1947-48), Vol. I, pages 48-58, 72, 158-174, 186-196, 200-210, 211-236, 260-278, 281-302, 303-321 and 325-358.

²All the provisions of the Act came into force in the whole of the Province of West Bengal on and from the 13th, March, 1948, vide Notification No. 1437P., dated the 12th March, 1948, published in Part I, page 265, of the *Calcutta Gazette, Extraordinary*, of the 13th March, 1948.

(Chapter I.—Preliminary.—Section 2.)

Def-
initions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- ¹(1) “essential commodity” means food, water, fuel, light or power and includes such other thing as may be declared by the Provincial Government by notification to be essential for the life of the community;
- (2) “goonda” has the same meaning as in the Goondas Act, 1923; Ben. Act I of 1923.
- (3) “notified” and “notification” mean notified and notification respectively in the *Official Gazette*;
- (4) “prejudicial report” means any report, statement or visible representation, which, or the publishing of which, is, or is an incitement to the commission of a subversive act as defined in clause 7;
- (5) “prescribed” means prescribed by any order made under this Act;
- ²(5a) “protected place” means a place declared under section 5A to be a protected place;
- ²(5b) “protected area” means an area declared under section 5B to be a protected area;
- (6) “public servant” includes any public servant as defined in the Indian Penal Code and any servant of any local authority or railway administration ³[and any person engaged in any employment or class of employment which the Provincial Government may, from time to time, declare to be employment or class of employment essential to the life of the community;] Act XLV of 1860.
- (7) “subversive act” means any act which is intended or is likely—
 - (a) to endanger—
 - (i) communal harmony, or
 - (ii) the safety or stability of the Province;
 - (b) to organise, further or help the illegal acquisition, possession or use of—
 - (i) arms, ammunition or military stores as defined in the Indian Arms Act, 1878, XI of 1878.
 - (ii) explosive substances (as defined in the Explosive Substances Act, 1908), or VI of 1908.
 - (iii) corrosive substances or liquids;
 - (c) to further the activities of goondas;
 - (d) to prejudice the recruiting of, or the attendance of persons for service in, any police force or fire brigade or any other body of persons entered, enrolled or engaged as public servants or to tamper with the loyalty of such persons;

¹This clause was substituted for the original clause by section 2(1) of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

²Clauses (5a) and (5b) were inserted by section 2(2) of the same Act.

³The words in square brackets were added by section 2(3) of the same Act.

III of 1948.]

(Chapter I.—Preliminary.—Sections 3—5.)

¹(e) to impede, delay or restrict—

(i) any work, or

(ii) any means of transport or locomotion,

necessary for the production, supply or distribution of any essential commodity except in furtherance of an industrial dispute as defined in the Industrial Disputes Act, 1947.

XIV of 1947.

Explanation.—²(i) Acts *bona fide* indicating disapprobation of the policy or measures of the Government with a view to obtain their alteration by lawful means shall not be deemed to be acts which are intended or are likely to endanger the safety or stability of the Province.

²(ii) An illegal strike or an illegal lock-out, as defined in section 24 of the Industrial Disputes Act, 1947, shall not be deemed to be an industrial dispute for the purposes of sub-clause (e).

3. The provisions of this Act and of any orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Effect of the provisions of the Act, when inconsistent with other law.

4. No prohibition, restriction or disability imposed by or under this Act, unless otherwise expressly provided by an order issued by the Provincial Government or by an officer specially authorised by the Provincial Government in this behalf, shall apply to anything done by, or under the direction of, any public servant acting in the course of his duty as such public servant.

Saving.

5. If any person to whom any provision of this Act relates or to whom any order made in pursuance of any such provision is addressed or relates or who is in occupation, possession or control of any land, building, vehicle, vessel or other thing to which such provision relates, or in respect of which such order is made—

Non-compliance with the provisions of this Act or any orders made thereunder.

(a) fails without lawful authority or excuse, himself, or in respect of any land, building, vehicle, vessel or other thing of which he is in occupation, possession or control, to comply with such provision or order, or

(b) evades, or attempts to evade, by any means such provision, or order,

he shall be deemed to have contravened such provision or order.

¹This clause was substituted for the original clause by section 2(4) (a) of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

²The original Explanation was renumbered as paragraph (i) thereof and also after the said paragraph, as so renumbered, paragraph (ii) was added by section 2(4)(b) of the same Act.

(Chapter IA.—Access to certain places and areas.—
Sections 5A, 5B.)

CHAPTER IA.

Access to certain places and areas.

Protected
places.

5A. (1) If as respects any place or class of places the Provincial Government considers it necessary or expedient that special precautions should be taken to prevent the entry of unauthorised persons, the Provincial Government may by order declare that place, or, as the case may be, every place of that class to be a protected place; and thereupon, for so long as the order is in force, such place or every place of such class, as the case may be, shall be a protected place for the purposes of this Act.

(2) No person shall, without the permission of the Provincial Government, enter, or be on or in, or pass over, or loiter in the vicinity of, any protected place.

(3) Where in pursuance of sub-section (2) any person is granted permission to enter, or to be on or in, or to pass over, a protected place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the Provincial Government.

(4) Any police officer, or any other person authorised in this behalf by the Provincial Government, may search any person entering, or seeking to enter, or being on or in, or leaving, a protected place, and any vehicle, vessel, animal or article brought in by such person and may, for the purpose of the search, detain such person, vehicle, vessel, animal and article:

Provided that no woman shall be searched in pursuance of this sub-section except by a woman.

(5) If any person is in a protected place in contravention of this section, then without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any police officer or by any other person authorised in this behalf by the Provincial Government.

(6) If any person is in a protected place in contravention of any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Protected
areas.

5B. (1) If the Provincial Government considers it necessary or expedient to regulate the entry of persons into any area, the Provincial Government may, without prejudice to any other provision of this Act, by order declare the area to be a protected area; and thereupon, for so long as the order is in force, such area shall be a protected area for the purposes of this Act.

(2) On and after such day as may be specified in, and subject to any exemptions for which provision may be made by, an order made under sub-section (1), no person who

¹Chapter IA containing new sections 5A, 5B, 5C and 5D was inserted by section 3 of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

[H of 1948.]

*(Chapter IA.—Access to certain places and areas.—
Sections 5C, 5D.)*

was not at the beginning of the said day resident in the area declared to be a protected area by the said order shall be therein except in accordance with the terms of a permit in writing granted to him by an authority or person specified in the said order.

(3) Any police officer, or any other person authorised in this behalf by the Provincial Government, may search any person entering or seeking to enter, or being on or in, or leaving, a protected area, and any vehicle, vessel, animal or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, vessel, animal and article:

Provided that no woman shall be searched in pursuance of this sub-section except by a woman.

(4) If any person is in a protected area in contravention of the provisions of this section, then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by or under the direction of any police officer on duty in the protected area.

(5) If any person is in a protected area in contravention of any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

5C. (1) Any person who effects or attempts to effect entry into a protected place or protected area—

Forcing or evading a guard.

(a) by using, or threatening to use, criminal force to any person posted for the purpose of protecting, or preventing or controlling access to, such place or area, or

(b) after taking precautions to conceal his entry or attempted entry from any such person,

shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

5D. (1) Without prejudice to any other provision of this Act, the Provincial Government, as respects—

Orders for certain places and areas.

(a) any place or area declared by it to be a protected place or protected area, or

(b) any other place or area in relation to which it appears to it to be necessary to take special precautions for preventing or suppressing subversive acts or for maintaining supplies and services essential to the life of the community,

may make orders for controlling or regulating the admission of persons to, and the conduct of persons in and in the vicinity of, such place or area.

¹Chapter IA containing new sections 5A, 5B, 5C and 5D was inserted by section 3 of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

*(Chapter II.—Prevention of Subversive Acts.—
Section 6.)*

(2) Without prejudice to the generality of the foregoing provisions, orders made under sub-section (1) in relation to any place or area may make provision—

- (a) for restricting the admission of persons to such place or area and for removing therefrom any person who is therein in contravention of the orders or who has been convicted of any contravention of the provisions of this Act;
- (b) for requiring the presence of any person or class of persons in such place or area to be notified to a prescribed authority and for requiring any person who has been convicted of any such offence as is mentioned in clause (a) of this sub-section to report his movements while in such place or area and to observe any other condition imposed upon him by a prescribed authority;
- (c) for requiring any person or class of persons in such place or area to carry such documentary evidence of identity, as may be prescribed; and
- (d) for prohibiting any person or class of persons from being in possession or control of any prescribed article.

(3) An order made under this section in respect of a protected place or protected area may exempt such place or area from all or any of the provisions of this Act which are expressed to apply to or in relation to a protected place or protected area, as the case may be, or may direct that all or any of the said provisions shall apply, subject to such modifications as may be specified in the order.

(4) An order made under this section in respect of a place or area which is not a protected place or protected area may direct that all or any of the provisions of this Act which are expressed to apply to or in relation to a protected place or protected area, as the case may be, shall apply to or in relation to the place or area in respect of which the order is made either without modification or subject to such modification as may be specified in the order.

(5) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

CHAPTER II.

Prevention of Subversive Acts.

Sabotage. 6. (1) No person shall do any act with intent to impair the efficiency or impede the working of, or to cause damage to,—

- (a) any building, vehicle, machinery, apparatus or other property used or intended to be used, for the purpose of Government or any local authority;

III of 1948.]

(Chapter II.—Prevention of Subversive Acts.—Section 7.)

IX of •
1890.
Ben. Act
VII of
1923.

XXII of
1934.

XIII of
1885.

(b) any railway (as defined in the Indian Railways Act, 1890), aerial ropeway (as defined in the Bengal Aerial Ropeways Act, 1923), tramway, road, canal, bridge, culvert, causeway, port, dockyard, lighthouse, aerodrome (as defined in the Indian Aircraft Act, 1934), air-field, air-strip or any installation thereon or any telegraph line or post (as defined in the Indian Telegraph Act, 1885);

(c) any rolling-stock of a railway or tramway or any vessel or aircraft;

(d) any building or other property used in connection with the production, distribution or supply of any essential commodity, any sewage works, mine or factory;

(e) any prohibited place as defined in sub-section (8) of section 2 of the Indian Official Secrets Act, 1923.

XIX
of 1923.

(2) The provisions of sub-section (1) shall apply in relation to any omission on the part of a person to do anything which he is under a duty, either to the Provincial Government or to any public authority or to any person, to do, as they apply to the doing of any act by a person.

(3) If any person contravenes any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both.

7. (1) No person shall, without lawful authority or excuse,—

(a) do any subversive act; or

(b) make, print, publish or distribute any document containing, or spread by any other means whatsoever, any prejudicial report.

Prohibition of subversive acts, publications and communications.

(2) The author, editor, printer and publisher of, and any person who otherwise makes or produces any prejudicial report, and any person who distributes or sells any report of that nature, knowing it to be of such nature, shall be deemed to have contravened this section.

(3) If any person contravenes any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both:

Provided that in any proceedings arising out of a contravention of this section,—

(a) in relation to the making or printing of any document, it shall be a defence for the accused to prove that the said document was made or printed, as the case may be,—

(i) before the Bengal Special Powers Ordinance, 1946, came into force, or

(ii) with the permission or under the authority of the Provincial Government, or

Ben. Ord.
VI of
1946.

(Chapter II.—Prevention of Subversive Acts.—Section 8.)

(iii) as a proof intended for submission to the Provincial Government or to a person or authority designated by the Provincial Government in this behalf with a view to obtaining permission for its publication;

(b) in relation to the publication of any document it shall be a defence for the accused to prove that the said document was published—

(i) before the Bengal Special Powers Ordinance, 1946, came into force, or

(ii) with the permission or under the authority of the Provincial Government.

Proscrip-
tion, etc.,
of certain
docu-
ments.

8. (1) Where in the opinion of the Provincial Government any document made, printed or published, whether before or after this Act comes into force, contains any prejudicial report, the Provincial Government may, by order,—

(a) require the author, printer, publisher or person in possession of such document not being a newspaper to inform the authority specified in the order of the name and address of any person concerned in the making of such report;

(b) provide for the safe keeping by persons in possession of such document and copies thereof;

(c) require the delivery of such document and any copy thereof to any authority specified in the order;

(d) prohibit the further publication, sale or distribution of such document, of any extract therefrom or of any translation thereof, including, in the case of a newspaper or other periodical, the publication, sale or distribution of any subsequent issue thereof;

(e) declare such document and every copy or translation thereof or extract therefrom, to be forfeited to His Majesty.

(2) Where in pursuance of sub-section (1) any document is required to be delivered to a specified authority, that authority may enter upon and search any premises whereon or wherein such document or any copy thereof is or is reasonably suspected to be.

(3) Where in pursuance of sub-section (1) any document has been declared to be forfeited to His Majesty, any police-officer may seize any copy thereof, wherever found and any Magistrate may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search any premises whereon or wherein such document or any copy thereof is or is reasonably suspected to be.

(4) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

III of 1948.]

(Chapter II.—Prevention of Subversive Acts.—Chapter III.
—Public Safety and Order.—Sections 9—11.)

9. (1) The Provincial Government may, for the purpose of preventing or suppressing subversive acts, by order addressed to a printer, publisher or editor, or to printers, publishers and editors generally,— Power to impose censorship.

(a) require that all matters, or any matter relating to a particular subject or class of subjects, shall, before being published in any document or class of documents, be submitted for scrutiny to an authority specified in the order;

(b) prohibit or regulate the making or publishing of any document or class of documents, or of any matter relating to a particular subject or class of subjects, or the use of any press, as defined in the Indian Press (Emergency Powers) Act, 1931.

XXIII of
1931.

(2) If any person contravenes any order made under subsection (1), then, without prejudice to any other proceedings which may be taken against such person, the Provincial Government may declare to be forfeited to His Majesty every copy of any document published or made in contravention of such order and any press, as defined in the Indian Press (Emergency Powers) Act, 1931, used in the making of such document.

(3) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

Explanation.—In this Chapter “document” includes gramophone records, sound tracks and any other articles on which sounds have been recorded with a view to their subsequent reproduction.

CHAPTER III.

Public Safety and Order.

10. Any person who carries on his person or knowingly has in his possession or under his control any corrosive substance or liquid, under such circumstances as to give rise to a reasonable suspicion that he does not carry it on his person or have it in his possession or under his control for a lawful object, shall, unless he can show that he was carrying it on his person or that he had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to seven years, to which fine may be added. Punishment for carrying or possessing any corrosive substance or liquid.

11. Whoever commits dacoity, robbery, theft, or theft in a building, vessel or vehicle or criminal misappropriation, if the commission of such offence takes place, Definition of looting.

(a) during a riot or any disturbance of the public peace at or in the neighbourhood of the riot, or the place at which such disturbance of the public peace occurs, or

(b) in any area in which a riot or disturbance of the public peace has occurred and before law and order has been completely restored in such area, or

(Chapter III.—Public Safety and Order.—Sections 12—15.)

(c) in circumstances such that a person whose property is stolen or criminally misappropriated is not, as a consequence of rioting or any other disturbance of the public peace, present or able to protect such property,

is said to commit the offence of looting.

Use of
force to
stop
looting.

12. Any police-officer may use such force as may be necessary even to the causing of death in order to stop the commission of the offence of looting within his view.

Curfew.

13. (1) The Commissioner of Police in Calcutta and the District Magistrate elsewhere may, subject to the control of the Provincial Government, by order direct that, subject to any exemption specified in the order, no person present within any area or areas specified in the order shall, between such hours as may be specified in the order, be out of doors except under the authority of a written permit granted by a specified authority or person.

(2) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(3) In this section "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866.

Ben. Act
IV of 1866.
Ben. Act
II of
1866.

Amend-
ment of
sections
127 and
128 of
the Code
of Cri-
minal
Procedure,
1898.

14. During the continuance in operation of this Act, in sections 127 and 128 of the Code of Criminal Procedure, 1898, for the words "or officer in charge of a police-station" the words "or any police-officer of or above the rank of a head constable" shall be deemed to have been substituted.

Act V
of 1898.

Control of
proces-
sions,
meetings,
etc.

15. (1) The Provincial Government may, by general or special order, prohibit, restrict or impose conditions upon, the holding of or taking part in processions, meetings or assemblies which, in its opinion, are likely to disturb the communal peace ¹[or to endanger the safety or stability of the Province].

(2) Any police-officer may take such steps, and use such force, as may be reasonably necessary for securing compliance with any order made under this section.

(3) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

¹These words in square brackets were added by section 4 of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

III of 1948.]

(Chapter III.—Public Safety and Order.—Sections 15A, 16.)

15A. (1) If, in the opinion of the Provincial Government, it is necessary or expedient so to do for preventing or suppressing subversive acts or for maintaining supplies and services essential to the life of the community, it may, by general or special order, prohibit or restrict the movement of any commodity, article or thing (including any vessel, vehicle, aircraft or animal) either generally or between any particular places or on any particular route.

Control of movements of commodities, articles or things.

(2) If any person contravenes any order made under sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both and the Court trying the offence shall order that the commodity, article or thing (including any vessel, vehicle, aircraft or animal) in respect of which the offence has been committed shall be forfeited to His Majesty.

16. (1) The Provincial Government, if satisfied
* * * with respect to any particular person that with a view to preventing him from doing any subversive act it is necessary so to do, may make an order—

Power to make orders restricting the movements or actions of or detaining certain persons.

- (a) directing that he be detained;
- (b) directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place in West Bengal as may be specified in the order;
- (c) requiring him to reside or remain in such place or within such area in West Bengal as may be specified in the order and if he is not already there to proceed to that place or area within such time as may be specified in the order;
- (d) requiring him to notify his movements or to report himself or both to notify his movements and report himself in such manner, at such times and to such authority or person as may be specified in the order;
- (e) imposing upon him such restrictions as may be specified in the order in respect of his employment, business or movements, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinions.

(2) Where an order is made under sub-section (1) directing any person to be detained, the Provincial Government may, if it so thinks fit, grant to such person, in accordance with such rules as it may make in this behalf, such allowance or expenses as it may deem appropriate.

(3) If any person is in any area or place in contravention of an order made under the provision of this section, or fails

¹This new section was inserted by section 5 of the same Act.

²The words "on reasonable grounds" were omitted by section 6(1) of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

(Chapter III.—Public Safety and Order.—Section 17.)

to leave any area or place in accordance with the requirements of such an order then, without prejudice to the provisions of sub-section (6), he may be removed from such area or place by any police-officer or by any person acting on behalf of the Provincial Government.

(4) So long as such an order as aforesaid in respect of any person directing that he be detained, is in force, he shall be liable to be removed to and detained in such place and under such conditions, which may include conditions as to maintenance, discipline or punishment for offences and breaches of discipline, as the Provincial Government may from time to time by general or special order specify.

(5) If the Provincial Government has reason to believe that a person in respect of whom such an order as aforesaid has been made directing that he be detained has absconded or is concealing himself so that the order cannot be executed, it may—

(a) make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

Act V
of 1898.

(b) by notified order direct the said person to appear before such officer, at such place, and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be¹[deemed to have contravened the order within the meaning of sub-section (6)].

(6) If any person contravenes any order made under this section² * * * he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Duration
of orders
made
under
section
16(1).

³17. Save as hereinafter in this section otherwise provided, an order made under sub-section (1) of section 16 shall be in force for such period not exceeding nine months, as may be specified in the order or for the period subsequent to the

¹The words, figure and brackets in square brackets were substituted for the words "punishable with imprisonment for a term which may extend to one year, or with fine, or with both" by section 6(2) of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

²The words, figure, letter and brackets "other than an order of the nature referred to in clause (b) of sub-section (5)" were omitted by section 6(3) of the same Act.

³This section was substituted for the original section by section 7 of the same Act.

II of 1948.]

(Chapter III.—Public Safety and Order.—Section 18.)

date of issue of such order during which this Act continues in operation, whichever is less, unless earlier cancelled by the authority making the order:

Provided that—

(a) the Provincial Government may, if and so often as it thinks fit,—

(i) in the case of an order under clause (a) of the said sub-section, place before a Judge of the High Court in Calcutta the grounds on which the order is made, the representations, if any, made under section 18 by the person affected thereby, and such further materials as the Provincial Government may think fit, subject to the following condition, that is to say,—

the person affected by the order shall not be entitled to be defended or represented by any lawyer or other person before the Judge, and, in accordance with the decision of the Judge thereon, the Provincial Government shall issue an order for the release of the person or for an extension of the period of his detention by such period or periods as may be determined by the Judge, and

(ii) in any other case, issue, after considering all the circumstances of the case, a fresh order to the same effect and subject to the same limitations as to duration as in the first instance;

(b) notwithstanding anything hereinbefore contained, it shall be lawful for the Provincial Government to release at any time, if it so thinks fit, any person in respect of whom an order under sub-clause (i) of clause (a) has been made.

18. Where an order is made in respect of any person under clause (a) of sub-section (1) of section 16, the authority making the order shall, within '[thirty days] after the order is made, communicate to the person affected thereby the grounds on which the order has been made against him except in so far as the said authority considers that disclosure of any fact would be against the public interest and such other particulars as are in the opinion of such authority sufficient to enable him to make, if he wishes, a representation against the order and such person may at any time thereafter make a representation in writing to such authority against the order and it shall be the duty of such authority to inform such person of his right of making such representation and to afford him the earliest practical opportunity of doing so.

Grounds of order of detention to be disclosed to person affected by the order.

¹The words in square brackets were substituted for the words "fifteen days" by section 8 of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

(Chapter III.—Public Safety and Order.—
Sections 18A—20.)

Punish-
ment for
harbour-
ing or
concealing
persons
ordered to
be detain-
ed.

18A. Whoever knowing or having reason to believe that an order directing any person to be detained has been made under clause (a) of sub-section (1) of section 16, harbours or conceals such person shall be punished with imprisonment for a term which may extend to two years and shall also be liable to a fine which may extend to one thousand rupees.

Explanation.—In this section, the word “harbour” includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as hereinbefore enumerated or not, to evade apprehension.

Control of
use of
loud-
speakers,
mega-
phones,
etc.

19. (1) The Provincial Government may, for the purpose of preventing or suppressing subversive acts, by general or special order, prohibit, restrict, regulate or impose conditions on—

(i) the use or operation in any street, square, public place or other open space of any apparatus for amplifying the human voice, or any reproduction of the human voice, such as a megaphone or an electrically operated loudspeaker; and

(ii) the use, operation or driving in any street, square, public place or other open space of any vehicle which carries or has attached to it any apparatus referred to in clause (i).

(2) Any police-officer may take such steps and use such force as may be reasonably necessary for securing compliance with any order made under this section and may seize any apparatus or vehicle in respect of which any contravention of any such order has in the opinion of such officer occurred:

Provided that any vehicle or apparatus seized by a police-officer under this sub-section shall be conveyed without delay before a Magistrate who may give such directions as to its temporary custody as he thinks fit, but if no prosecution is instituted for a contravention of the order in respect of the vehicle or apparatus seized within a period which is in the opinion of the Magistrate reasonable, he shall direct its return to the person from whom it was seized.

(3) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and any Court trying such contravention may direct that any apparatus or vehicle in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty.

Unlawful
drilling.

20. (1) The Provincial Government may, by general or special order, prohibit or restrict in any area any such exercise, movement, evolution or drill of a military nature as may be specified in the order.

¹This new section was inserted by section 9 of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

[11 of 1948.]

(Chapter III.—Public Safety and Order.—Chapter IV.—
Miscellaneous Provisions.—Sections 21—23.)

(2) The Provincial Government may, by general or special order, with a view to securing that no unauthorised exercise, movement, evolution or drill of a military nature is performed at any place, prohibit, restrict or impose conditions on the holding of, or taking part in, any such camp, parade, meeting or assembly, or such class thereof, as may be specified in the order.

(3) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

21. (1) If the Provincial Government is satisfied that the wearing in public of any dress or article of apparel resembling any uniform or part of a uniform required to be worn by a member of His Majesty's Forces or of the Forces of the Dominion of India or by a member of any official Police Force or of any force constituted under any law for the time being in force would be likely to prejudice the public safety, or the maintenance of public order, the Provincial Government may, by general or special order, prohibit or restrict the wearing or display in public of any such dress or article of apparel.

Unofficial uniforms, etc.

(2) For the purposes of this section, a dress or an article of apparel shall be deemed to be worn or displayed in public if it is worn or displayed so as to be visible to a person in any place to which the public have access.

(3) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

22. (1) Any officer of Government authorised in this behalf by general or special order of the Provincial Government may, within such area as may be specified in the order, require any male person in that area to assist in the maintenance or restoration of law and order or in the protection of property for such period and in such manner as the officer may direct.

Powers to require the assistance of certain persons.

(2) If any person fails to comply with any lawful direction given to him under sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

CHAPTER IV.

Miscellaneous Provisions.

23. (1) Without prejudice to any special provisions contained in this Act, the Provincial Government may by order require any person to furnish or produce to any specified authority or person any such information or article in his possession as may be specified in the order, being information, or an article which the Provincial

Power to obtain information.

(Chapter IV.—Miscellaneous Provisions.—Sections 24, 25.)

Government considers it necessary or expedient in the interests of the prevention or suppression of subversive acts to obtain or examine:

Provided that—

- (i) no editor, printer or publisher of a newspaper shall be required to furnish or produce any such information or article in respect of any matter published in such newspaper, and
- (ii) no person shall be required to furnish or produce any information or article which, under the provisions of the Indian Evidence Act, 1872, he cannot be compelled to furnish or produce. I of 1872.

(2) If any person fails to furnish or produce any information or article in compliance with an order made under sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

False statement.

24. If any person when required by or under any of the provisions of this Act to make any statement or furnish any information, makes any statement or furnishes any information which he knows or has reasonable cause to believe to be false, or not true in any material particular, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Requisitioning of property.

25. (1) If in the opinion of the Provincial Government it is necessary or expedient so to do for preventing or suppressing subversive acts or for maintaining supplies, and services essential to the life of the community or for rehabilitating persons displaced from their residences or shops due to communal strife, it may by order in writing requisition any property, moveable or immoveable, and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no place or premises used for the purpose of religious worship shall be requisitioned under this section.

(2) Where the Provincial Government has requisitioned any property under sub-section (1), it may use or deal with the property in such manner as may appear to it to be expedient.

(3) Whenever in pursuance of sub-section (1), the Provincial Government requisitions any moveable property, the owner thereof shall be paid such compensation as the Provincial Government may determine:

Provided that where the owner of such property, being aggrieved by the amount of compensation so determined, makes an application for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as an arbitrator appointed in this behalf by the Provincial Government may determine:

Provided further that, where immediately before the requisition the property was by virtue of a hire purchase agreement in the possession of a person other than the owner,

III of 1948.]

(Chapter IV.—Miscellaneous Provisions.—Section 25.)

the amount determined by the Provincial Government as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Provincial Government in this behalf may decide to be just.

(4) Where in pursuance of sub-section (1) the Provincial Government requisitions any immoveable property, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say,—

- (a) where the amount of compensation can be fixed by agreement, it shall be paid within three months in accordance with such agreement;
- (b) where no such agreement can be reached, the Provincial Government shall appoint an arbitrator a District Judge or an Additional District Judge;
- (c) the Provincial Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose;
- (d) at the commencement of the proceedings before the arbitrator, the Provincial Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;
- (e) an appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount of compensation awarded does not exceed five thousand rupees in lump or, in the case of an amount payable periodically, two hundred and fifty rupees *per mensem*;
- (f) save as provided, in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this sub-section.

(5) Where any immoveable property requisitioned under sub-section (1) is to be released from requisition, the Provincial Government may, after making such enquiry, if any, as it considers necessary, specify by order in writing the person who appears to the Provincial Government to be entitled to the possession of such property.

(6) The delivery of possession of the immoveable property requisitioned under sub-section (1) to the person specified in an order made under sub-section (5) shall be a full discharge of the Provincial Government from all liability in respect of such delivery, but shall not prejudice any rights in respect of such property which any other person may be entitled by due process of law to enforce against the person to whom possession of such property is so delivered.

(Chapter IV.—Miscellaneous Provisions.—Section 25.)

(7) Where the person to whom possession of any immoveable property requisitioned under sub-section (1) is to be given cannot be found or is not readily ascertainable or has no agent or other person empowered to accept delivery on his behalf, the Provincial Government shall cause a notice declaring that such property is released from requisition to be affixed on some conspicuous part of such property and publish the notice in the *Official Gazette*.

(8) When a notice referred to in sub-section (7) is published in the *Official Gazette*, the immoveable property specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the Provincial Government shall not be liable for any compensation or other claim in respect of such property for any period after the said date.

(9) Where any immoveable property requisitioned under sub-section (1) is released from requisition, compensation shall also be paid in respect of any damage done during the period of requisition to such property other than what may have been sustained by normal wear and tear or by natural causes. When the amount of such compensation can be fixed by agreement, it shall be paid in accordance with such agreement; where no such agreement can be reached, the matter shall be referred to an arbitrator and thereupon the provisions of sub-section (4) shall, as far as may be, apply.

(10) The Provincial Government may, with a view to requisitioning any property under sub-section (1) or determining the compensation payable under sub-section (3), by order—

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified;

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of the Provincial Government dispose of it or where the property is a building, structurally alter it or where the property is moveable, remove it from the premises in which it is kept till the expiry of such reasonable period as may be specified in the order.

(11) Without prejudice to any powers otherwise conferred by this Act, any person authorised in this behalf by the Provincial Government may enter any premises between sunrise and sunset and inspect such premises and any property therein or thereon for the purpose of determining whether, and, if so, in what manner, an order under this section should be made in relation to such premises or property, or with a view to securing compliance with any order made under this section.

(12) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

III of 1948.]

(Chapter IV.—Miscellaneous Provisions.—Chapter V.—
Supplementary and Procedural.—Sections 26—28.)

26. (1) Save as otherwise expressly provided in this Act, every authority, officer or person who makes any order in writing in pursuance of any provision thereof shall publish or serve or cause to be served notice of such order in such manner as may be ¹[provided in] rules made by the Provincial Government.

Publica-
tion
and service
of notices.

(2) Where this Act empowers an authority, officer or person to take action by notified order, the provisions of sub-section (1) shall not apply in relation to such order.

(3) If in the course of any judicial proceedings, a question arises whether a person was duly informed of an order made in pursuance of any provision of this Act, compliance with sub-section (1), or in a case to which sub-section (2) applies, the notification of the order, shall be conclusive proof that he was so informed, but a failure to comply with sub-section (1)—

(i) shall not preclude proof by other means that he had information of the order; and

(ii) shall not affect the validity of the order.

(4) Any police-officer, and any other person authorised by the Provincial Government in this behalf may, for any purpose connected with the prevention or suppression of subversive acts or with maintaining supplies and services essential to the life of the community or for carrying out the provisions of this Act affix any notice to, or cause any notice to be displayed on, any premises, vehicle or vessel, and may for the purpose of exercising the power conferred by this section enter any premises, vehicle or vessel at any time.

(5) Any person authorised by the Provincial Government in this behalf may, for any purpose mentioned in sub-section (4), by order direct the owner or other person in possession or control of any premises, vehicle or vessel to display any notice on, or in, the premises, vehicle or vessel in such manner as may be specified in the order.

CHAPTER V.

Supplementary and Procedural.

27. Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, any of the provisions of this Act or of any order made thereunder, shall be deemed to have contravened that provision or, as the case may be, that order.

Attempts,
etc., to
contra-
vene the
provisions
of the
Act.

28. (1) In any area in which the Provincial Government, as a consequence of apprehended danger to the public in such area, notifies in the *Official Gazette* in this behalf, any police-officer may in any road, street, alley, public

Special
provision
for
searches.

¹The words in square brackets were substituted for the words "prescribed by" by section 10 of the West Bengal Security (Amendment) Act, 1948 West Ben. Act XIX of 1948).

*(Chapter V.—Supplementary and Procedural.—
Sections 29, 30.)*

place, or open space, stop and search any person in such area for the purpose of ascertaining whether such person is carrying, in contravention of any law for the time being in force, any explosive or corrosive substance or liquid or any weapon of offence or any article which may be used as a weapon of offence and may seize any such substance or liquid together with its container, if any, or any such weapon or article discovered during such search:

Provided that every such search shall be made with due regard to decency and that no woman shall be searched except by a woman.

¹(1A) Any police officer, authorised in this behalf by general or special order of a Deputy Commissioner of Police in Calcutta and the Superintendent of Police elsewhere, may enter and search any place, vessel, vehicle, aircraft or animal and, for that purpose, stop any vessel, vehicle, aircraft or animal and may seize any commodity, article or thing (including any vessel, vehicle, aircraft or animal) which, he has reason to believe, has been, is being or is about to be, used in contravening any order made under sub-section (1) of section 15A or for doing any other subversive act.

Explanation.—In this sub-section “Calcutta” has the same meaning as in section 13.

²(2) Anything seized under sub-section (1) shall be conveyed, and any commodity, article or thing (including any vessel, vehicle, aircraft or animal) seized under sub-section (1A) shall be reported, without delay before a Magistrate who may give such directions as to the temporary custody thereof as he may think fit, so, however, that where no prosecution in respect thereof is instituted within a period in his opinion reasonable, the Magistrate may, subject to the provisions of any other law for the time being in force, give such orders as to the final disposal thereof as he deems expedient.

General
power of
arrest
without
warrant.

29. Any police-officer may arrest without warrant any person who is reasonably suspected of having committed, or of committing a contravention of any order made under section 13.

Powers of
arrest
and
detention.

30. (1) Any police-officer not below the rank of Sub-Inspector, or any other officer of Government empowered in this behalf by general or special order of the Provincial Government, may arrest without warrant any person whom he reasonably suspects of having done, of doing, or of being about to do any subversive act.

(2) Any officer who makes an arrest in pursuance of sub-section (1) shall forthwith report the fact of such arrest to

¹This new sub-section was inserted by section 11(1) of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX of 1948).

²This sub-section was substituted for the original sub-section by section 11(2) of the West Bengal Security (Amendment) Act, 1948 (West Ben. Act XIX 1948).

[11 of 1948.]

(Chapter V.—Supplementary and Procedural.—
Sections 31, 32.)

the Provincial Government, and, pending the receipt of the orders of the Provincial Government, may, by order in writing, commit any person so arrested to such custody as the Provincial Government may, by general or special order, specify:

Provided that no person shall be detained in custody under this sub-section for a period exceeding ¹[thirty days] without the order of the Provincial Government.

(3) On receipt of any report made under the provisions of sub-section (2), the Provincial Government may, in addition to making such order as may appear ²[to the Provincial Government] to be necessary for the temporary custody of any person arrested under this section, make, in exercise of any power conferred upon it by any law for the time being in force, such final order as to his detention, release, residence or any other matter concerning him as may appear to the Provincial Government in the circumstances of the case to be reasonable or necessary.

31. (1) No Court shall take cognizance of any alleged contravention of the provisions of this Act or of any order made thereunder, except on a report in writing of the facts constituting such contravention, made by a public servant.

Cogniz-
ance of
contra-
ventions
of the
provisions
of the Act
or orders
made
there-
under.

(2) Proceedings in respect of a contravention of the provisions of this Act alleged to have been committed by any person may be taken before the appropriate Court having jurisdiction in the place where that person is for the time being.

Act V of
1898.

(3) Notwithstanding anything contained in Schedule II to the Code of Criminal Procedure, 1898, a contravention of the provisions of section 6, shall be triable by a Court of Session, a Presidency Magistrate or a Magistrate of the first class.

(4) Any magistrate or bench of magistrates empowered for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898, may if such magistrate or bench of magistrates thinks fit, on application in this behalf being made by the prosecution, try a contravention of any such provisions of this Act or orders made thereunder as the Provincial Government may by notified order, specify in this behalf, in accordance with the provisions contained in sections 262 to 265 of the said Code.

32. (1) Any authority, officer, or person who is empowered by or in pursuance of the provisions of this Act to make any order, or to exercise any other power, in addition to any other action prescribed by or under this Act, take, or cause to be taken, such steps as may, in the opinion of such authority, officer or person, be reasonably necessary

Power to
give
effect to
orders,
etc.

¹The words in square brackets were substituted for the words "fifteen days" by section 12(1) of the West Bengal Security (Amendment) Act 1948 (West Ben. Act XIX of 1948).

* ²The words in square brackets were inserted by section 17(2) of the Act.

(Chapter V.—*Supplementary and Procedural.*—
Sections 33—36.)

for securing compliance with, or for preventing or rectifying any contravention of, such order, or for the effective exercise of such power.

(2) Where in respect of any of the provisions of this Act there is no authority, officer or person empowered to take action under sub-section (1), the Provincial Government may take, or cause to be taken, such steps as may in the opinion of the Provincial Government be reasonably necessary for securing compliance with, or preventing or rectifying any breach of, such provision.

(3) For the avoidance of doubt it is hereby declared that the power to take steps under sub-section (1) or under sub-section (2) includes the power to enter upon any land or other property whatsoever.

Saving as
to orders.

33. (1) Subject to the provisions of section 491 of the Code of Criminal Procedure, 1898, no order made in exercise of any power conferred by or under this Act, shall be called in question in any Court. Act V of 1898.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority. I of 1872.

Protec-
tion of
action
taken
under the
Act.

34. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

Delegation
of powers
and duties
of the
Provincial
Govern-
ment.

35. The Provincial Government may, by notified order, direct that any power or duty which is conferred or imposed by any provision of this Act upon the Provincial Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also by any officer or authority subordinate to the Provincial Government.

Power to
make rules.

36. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the principles and the procedure to be followed in assessing, and in making the payment of, allowances and expenses referred to in sub-section (2) of section 16;

[III of 1948.]

*(Chapter V.—Supplementary and Procedural.—
Section 37.)*

- (b) the procedure to be followed in arbitrations and the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal referred to in section 25;
- (c) the manner of publication and service of notices referred to in sub-section (1) of section 26.

37. (1) Any order made or deemed to have been made, any notification issued or deemed to have been issued or any direction given or deemed to have been given under any provision of the Bengal Special Powers Ordinance, 1946, and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made, notification issued or direction given under the corresponding provision of this Act and any penalty incurred, action taken or proceedings commenced under any provision of the said Ordinance shall be deemed to have been incurred, taken or commenced under this Act as if this Act were already in force when such penalty was incurred, or such action was taken or such proceedings were commenced.

*Saving and
Repeal.*

Ben. Ord.
VI of
1946.

Ben. Act
I of 1947.

(2) The Bengal Ordinances Temporary Enactment Act, 1947, in so far as it enacts and continues in operation, the provisions of the Bengal Special Powers Ordinance, 1946, is hereby repealed.

West Bengal Act IV of 1948¹

THE WEST BENGAL SPECIAL BENCHES (CONTINUANCE) ACT, 1948.

[15th March, 1948.]

An Act to provide for the continuance of the Special Benches constituted under the Bengal Criminal Law Amendment Ordinance, 1947, and for the disposal of cases pending before them.

Ben. Ord.
I of 1947.
Ben. Act I
of 1947.

WHEREAS the provisions of the Bengal Criminal Law Amendment Ordinance, 1947, as enacted and continued in operation by and under the Bengal Ordinances Temporary Enactment Act, 1947 (hereinafter referred to as "the said provisions"), are temporary in their duration;

AND WHEREAS it is expedient that the Special Benches constituted under the said provisions should be continued and the cases which were allotted to them before the commencement of this Act and are pending before them at such commencement should be disposed of by the said Benches in accordance with the said provisions;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Special Benches (Continuance) Act, 1948.

Short title
and
commence-
ment.

(2) It shall come into force on the date on which the said provisions cease to operate under the Bengal Ordinances Temporary Enactment Act, 1947.

2. Notwithstanding the expiry of the said provisions it shall be lawful—

Continu-
ance of the
Special
Benches
and dis-
posal of
pending
cases.

(a) for the Special Benches constituted thereunder before the commencement of this Act to dispose of, in accordance with the said provisions, the cases which having been allotted to them thereunder are pending before them at such commencement, and

(b) for the Provincial Government to reconstitute, in accordance with the said provisions, if necessary, such Special Benches or any of them, for such disposal of the said cases as aforesaid,

and the said Special Benches whether, reconstituted as aforesaid or not, shall continue to function as such till the disposal of the said cases as if the said provisions had not expired.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 2nd February, 1948, Part IV, page 137; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 13th February, 1948.

West Bengal Act V of 1948¹

THE WEST BENGAL EXPIRING LAWS ACT, 1948.

[15th March, 1948.]

An Act to provide for the further continuance in operation of the provisions of certain Bengal Ordinances as enacted and continued in operation by and under the Bengal Ordinances Temporary Enactment Act, 1947.

Ben. Act
I of 1947.

WHEREAS the provisions of the Ordinances specified in the schedule as enacted and continued in operation by and under the Bengal Ordinances Temporary Enactment Act, 1947 (hereinafter referred to as the said provisions) are temporary in their duration;

AND, WHEREAS it is expedient to provide for the continuance, as in this Act mentioned, of the said provisions for a further period;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Expiring Laws Act, 1948.

Short
title and
commence-
ment.

(2) It shall come into force on the date on which the said provisions cease to operate under the provisions of the Bengal Ordinances Temporary Enactment Act, 1947.

2. (1) The said provisions shall be deemed to be enacted by this Act and shall have effect and shall continue to operate as such until the 31st day of March, 1949.

Continu-
ance of the
provisions
of certain
Ordi-
nances.

(2) Any rules, orders, notifications or directions issued or anything done or any action taken or any proceedings commenced under any of the said provisions and in force immediately before the commencement of this Act shall continue in force and shall be deemed to have been issued, done, taken, or commenced, as the case may be, under the corresponding provision as deemed to be enacted and continued in operation by this Act as if this Act were already in force on the date on which such rules, orders, notifications or directions were issued or thing was done or action was taken or proceedings were commenced.

3. On the expiration of the period during which the said provisions continue in operation under this Act, such expiration shall not affect—

Effect of
expiration
of the pro-
visions
continued
by this
Act.

(a) any penalty or punishment incurred or alleged to have been incurred under the said provisions during their continuance in operation, or

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 1st March, 1948, Part IVA, page 239; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 4th March, 1948.

[West Ben. Act V of 1948.]

(The Schedule.)

(b) any investigation, legal proceeding or remedy in respect of any such penalty or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the said provisions had not ceased to operate.

THE SCHEDULE.*(See section 2.)*

Ordinances promulgated by the Governor of Bengal under section 88 of the Government of India Act, 1935.

Year.	Number.	Short title.
1946	III ...	The Bengal Molasses Control Ordinance, 1946.
1946	V ...	The Calcutta Rent Ordinance, 1946.
1946	XI ...	The Bengal Jute Mills (Temporary Provision) Ordinance, 1946.

West Bengal Act VI of 1948¹

THE REQUISITIONED LAND (CONTINUANCE OF POWERS) WEST BENGAL AMENDMENT ACT, 1948.

[18th March, 1948.]

An Act to amend the Requisitioned Land (Continuance of Powers) Act, 1947, in its application to West Bengal.

XVII of
1947.

WHEREAS it is expedient to amend the Requisitioned Land (Continuance of Powers) Act, 1947, in its application to West Bengal for the purpose and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Requisitioned Land (Continuance of Powers) West Bengal Amendment Act, 1948. Short title and extent.

(2) It extends to the whole of West Bengal.

2. The Requisitioned Land (Continuance of Powers) Act, 1947, hereinafter referred to as the said Act, shall, in its application to West Bengal, be amended in the manner provided in this Act. Application of Act.

3. In sub-section (3) of section 1 of the said Act for the words, figures and brackets "mentioned in section 4 of the India (Central Government and Legislature) Act, 1946" the words and figures "ending the 31st day of March, 1950" shall be substituted. Amendment of section 1 of Act XVII of 1947.

4. In section 2 of the said Act, clauses (1) and (3) shall be omitted. Amendment of section 2.

5. In sections 3, 4, 5 and 7 of the said Act for the words "appropriate Government" wherever they occur, the words "Provincial Government" shall be substituted. Amendment of sections 3, 4, 5 and 7.

6. In sub-sections (2) and (4) of section 4 of the said Act for the words "the Government" the words "the Provincial Government" shall be substituted. Amendment of section 4.

7. In sub-section (3) of section 5 of the said Act for the words "of Government" occurring for the first time the words "of the Provincial Government" and for the words "of Government" occurring for the second time the words "of such Government" and for the words "from Government" the words "from such Government" shall be substituted. Amendment of section 5.

8. In section 8 of the said Act, the words "Central Government or any" shall be omitted. Amendment of section 8.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 11th February, 1948, Part IV, page 183; for proceedings in the West Bengal Legislative Assembly, see the minutes of the proceedings of the meeting of the West Bengal Legislative Assembly held on the 19th February, 1948.

West Bengal Act VIII of 1948¹

THE CORPORATION OF CALCUTTA (TEMPORARY SUPERSESSION) ACT, 1948.

[23rd March, 1948.]

An Act to provide for the temporary supersession of the Corporation of Calcutta.

WHEREAS it is expedient to provide for the supersession of the Corporation of Calcutta for a short period and

Page 383—

In sub-section (3) of section 1, for the words and figures "31st day of March, 1950", substitute the words and figures "31st day of December, 1950".

(Substituted by West Ben. Act I of 1950, section 2.)
Page 383—

Short title,
commence-
ment and
duration.

In sub-section (3) of section 1, for the words and figures "31st day of December, 1950", substitute the words and figures "31st day of March, 1952".

(Substituted by West Bengal Act 1 of 1951, section 2.)

[No. 48, dated the 1st April, 1952.]

subject or context,—

Definitions.

Ben. Act
III of 1923.

(a) "the Act" means the Calcutta Municipal Act, 1923; and

(b) "the Corporation" means the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1923.

3. The Provincial Government may, if it so thinks fit, by an order published in the *Official Gazette*, supersede the Corporation from such date and for such period as may be specified in the order.

Superses-
sion of the
Corpora-
tion.

4. (1) When an order of supersession has been made under section 3, the following consequences shall ensue:—

Consequen-
ces of
superses-
sion.

(a) all the Councillors and Aldermen constituting the Corporation, all the members constituting the Committees thereof and the Mayor and Deputy Mayor of the Corporation shall, as from the date of supersession, vacate their offices as such Councillors, Aldermen, members of the Committees and Mayor and Deputy Mayor;

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 16th March, 1948, Part IV, page 295; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 23rd March, 1948.

²The Act was brought into force on the 23rd March, 1948, vide notification No. L.S.G. 1C-18/48(1), dated the 23rd March, 1948, published at page 348 of the *Calcutta Gazette* of the 23rd March, 1948, Part I.

(Sections 5, 6.)

- (b) all the powers, duties and functions which may under the provisions of the Act or any rule or by-law made thereunder or of any other law for the time being in force, be exercised and performed by the Corporation or any Committee thereof or by the Mayor or Deputy Mayor or by Councillors or Aldermen shall, during the period of supersession, be exercised and performed by such person (to be called the Administrative Officer) as may be appointed by the Provincial Government in

*Page 384—

Omit clause (c) of sub-section (1) of section 4, and put an asterisk before the clause as so omitted and insert the following foot-note, namely:—

*This clause was omitted with retrospective effect, vide section 3 of West Ben. Act I of 1950.

(Omitted by West Ben. Act I of 1950, section 3.)

[No. 45, dated the 2nd December, 1950.]

(2) (a) Before the expiration of the period of supersession, there shall be a fresh general election of Councillors and a fresh election of Aldermen in conformity with the provisions of the Act and the persons who vacated their offices under clause (a) of sub-section (1) shall not be deemed disqualified for such elections.

(b) On the expiration of the period of supersession, the Corporation shall be reconstituted on the results of the elections referred to in clause (a) in accordance with the provisions of the Act.

Adminis-
trative
Officer.

5. (1) The Administrative Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

(2) The Administrative Officer shall receive such monthly salary not exceeding three thousand rupees and such monthly allowances not exceeding in the aggregate five hundred rupees as may be fixed by the Provincial Government.

(3) The salary and allowances fixed under sub-section (2) shall be paid from the Municipal Fund referred to in the Act.

The Exe-
cutive
Officer or
Deputy
Executive
Officer,
etc., shall
be subordi-
nate to the
Adminis-
trative
Officer.

6. Notwithstanding anything contained in the Act, or any rule or by-law made thereunder, the exercise or discharge by the Executive Officer or Deputy Executive Officer or Chief Engineer or Chief Accountant or Health Officer or Secretary of any powers, duties or functions vested in or imposed upon him by the provisions of the Act or any rule or by-law made thereunder shall, during the period of supersession under section 3, be subject to control and revision by the Administrative Officer.

VIII of 1948.]

(Sections 7—9.)

7. In addition to the powers, duties and functions conferred and imposed on the Administrative Officer under clauses (b) and (d) of sub-section (1) of section 4 and section

*Page 385—

After section 8, insert the following section, namely:—

“8A. (1) Nothing in this Act or in any other law shall be construed as effecting or implying in any way the dissolution of the Corporation as a body corporate.

Corporation to continue as a body corporate and proceedings to be in its name.

(2) Notwithstanding anything in this Act or in any other law, suits, prosecutions and other legal proceedings shall be instituted, defended or continued in the name of the Corporation in like manner as immediately before the commencement of this Act.”

and put a pair of asterisks before the section so inserted and insert the following foot-note, namely:—

**This section was inserted with retrospective effect, vide section 3 of West Ben. Act I of 1950.

(Inserted by West Ben. Act I of 1950, section 4.)

[No. 45, dated the 2nd December, 1950.]

Power of the Provincial Government to vest the Administrative Officer with additional powers and duties.

any Indemnity.

Power of the Provincial Government to make orders in case of difficulty.

West Bengal Act IX of 1948¹

THE WEST BENGAL MINISTERS' EMOLUMENTS ACT. 1948.

[31st March, 1948.]

An Act to fix the salaries and allowances of the Governor's Council of Ministers.

WHEREAS it is expedient to fix the salaries and allowances of the Governor's Council of Ministers;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Ministers' Emoluments Act, 1948. Short title and commencement.

(2) It shall come into force on the 1st day of April, 1948.

2. There shall be paid a salary to each of the Ministers (including the Premier) at the rate of seven hundred and fifty rupees *per mensem*. Salary.

3. In addition to the salary referred to in section 2, there shall be paid— Allowances

(a) a sumptuary allowance at the rate of—

(i) five hundred rupees *per mensem* to the Premier, and

(ii) two hundred and fifty rupees *per mensem* to each of the other Ministers; and

(b) a motor-car allowance at the rate of two hundred and fifty rupees *per mensem* to each of the Ministers (including the Premier):

Provided that if for any period exceeding thirty days a motor-car is made available to any Minister for his use at the expense of the Provincial Government, no motor-car allowance shall be payable under this clause to such Minister for such period.

Ben. Act I
of 1937.

4. The Bengal Ministers' Salaries Act, 1937, is hereby repealed.

Repeal of
Bengal Act
I of 1937.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 27th February, 1948, Part IV, page 205; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 22nd March, 1948.

West Bengal Act XII of 1948¹

THE CORPORATION OF CALCUTTA (INVESTIGATION COMMISSION) ACT, 1948.

[15th April, 1948.]

An Act to provide for the appointment of a Commission to investigate certain matters relating to the Corporation of Calcutta, and for certain other matters connected therewith.

WHEREAS it is expedient to provide for the appointment of a Commission to investigate certain matters relating to the Corporation of Calcutta, and for certain other matters connected therewith;

It is hereby enacted as follows:—

1. (1) This Act may be called the Corporation of Calcutta (Investigation Commission) Act, 1948. Short title and extent.

(2) It extends to the whole of West Bengal.

2. In this Act the expressions "Calcutta" and "the Corporation of Calcutta" have the same meanings as in the Calcutta Municipal Act, 1923. Definitions.

Ben. Act
III of
1923.

3. The Provincial Government may, by notification in the *Official Gazette*, constitute a Commission to be called the Corporation of Calcutta Investigation Commission (hereinafter referred to as the Commission) whose duties it shall be— Constitution and functions of Commission.

(a) to investigate and report to the Provincial Government on all matters relating to the finances and administration of the Corporation of Calcutta and the working of the Calcutta Municipal Act, 1923;

(b) to make recommendation for improving the finances and administration of the Corporation of Calcutta, removing abuses in relation thereto, if any, and amending the Calcutta Municipal Act, 1923, if necessary, for ensuring better administration.

4. (1) The Commission shall consist of a Chairman (being a person who is or has been a Judge of a High Court) and two other Commissioners, appointed by the Provincial Government. Composition of Commission.

(2) On the occurrence from any cause of a vacancy among the Commissioners, the Provincial Government may, if it thinks fit, appoint a person to fill the vacancy.

Act V of
1908.

5. (1) The Commission shall have power to administer oaths, and shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purposes of taking evidence on oath, enforcing the attendance of any person whom it considers necessary to examine, compelling the Powers of Commission.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 24th February, 1948, Part IV, page 201; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 22nd March, 1948.

(Section 6.)

production of documents and issuing commissions or letters of request for the examination of witnesses, and shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and any reference in the said chapter to the presiding officer of a Court shall be deemed to include a reference to the Chairman of the Commission.

Act V of 1898.

(2) If it appears to the Commission that it is necessary to examine any accounts or documents, or to investigate any particular matter which it cannot itself conveniently examine or investigate, the Commission may authorise any person qualified in its opinion to make such examination or investigation to examine such accounts or documents or to investigate such particular matter and to interrogate for that purpose any person having charge or custody of such accounts or documents, or having knowledge of such particular matter and to make a report to the Commission; any person having charge or custody of such accounts or documents shall be bound to produce them to the person so authorised and to give such person any information in respect thereof which the person so authorised may require; and any person having knowledge of such particular matter shall be bound to give to the person so authorised any information in respect thereof which such person may require. The Commission may make such use of the report as it thinks fit.

(3) (a) The Commission may require the Corporation of Calcutta or any person who is or was a Councillor or an Alderman or any officer or servant of the Corporation of Calcutta to furnish any return, document, plan, estimate, statement, account, statistics, information or report and the Corporation of Calcutta or such Councillor or Alderman or such officer or servant shall be bound to comply with such requisition without delay.

(b) The powers conferred by this sub-section shall be in addition to and not in derogation of the powers conferred by sub-section (1) and sub-section (2).

(4) The Commissioners and all persons authorised by the Commission under sub-section (2) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Act XLV of 1860.

Procedure of Commission.

6. (1) The Commission shall, subject to the provisions of this Act, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding the temporary absence of any Commissioner or Commissioners or a vacancy in the number of the Commissioners.

(2) In making an investigation under clause (a) of section 3, the Commission shall act in accordance with the principles of natural justice and shall follow as far as practicable the principles of the Indian Evidence Act, 1872. I of 1872.

XII of 1948.]

(Sections 7, 8.)

(3) Except with the previous sanction of the Provincial Government,—

(a) no suit, prosecution or other legal proceeding shall be instituted against any person in any Civil or Criminal Court for any evidence given by him in any proceedings before the Commission, and

(b) no evidence so given shall be admissible in evidence against such person in any suit, prosecution or other proceeding before such Court.

(4) No document shall be inadmissible in any proceedings before the Commission on the ground that it is not duly stamped or registered.

7. No act or proceeding of the Commission or of any person authorised by it under sub-section (2) of section 5 shall be called in question in any manner by or in any Court and no suit, prosecution or other legal proceeding shall lie against the Crown or any Commissioner or any other person for anything done or intended to be done under this Act. Bar of jurisdiction.

8. The Provincial Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act. Power to make rules.

West Bengal Act XIII of 1948¹

THE WEST BENGAL FACTORIES AND MINES (CONTROL OF DISMANTLING) ACT, 1948.

[22nd April, 1948.]

An Act to provide for the control of dismantling of factories and mines.

WHEREAS it is expedient to provide for the control of dismantling of factories and mines;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Factories and Mines (Control of Dismantling) Act, 1948. Short title, extent and commencement.

(2) It extends to the whole of West Bengal.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “to dismantle” a factory or a mine means to remove from its position the machinery or part of the machinery of the factory or the mine, where by such removal, the factory or the mine is rendered wholly or partly useless for its purpose; but does not include any temporary removal of the machinery or part of the machinery for purposes such as adjustment, cleaning and repairs;

XXV
of 1934.

(b) “factory” means a factory as defined in clause (j) of section 2 of the Factories Act, 1934, but includes also any premises which were at any time whether before or after the commencement of this Act a factory as so defined;

(c) “machinery” has the meaning assigned to that word in clause (k) of section 2 of the Factories Act, 1934; and

IV of 1923.

(d) “mine” has the meaning assigned to that word in clause (f) of section 3 of the Indian Mines Act, 1923.

3. (1) No person shall, without the written permission of the Provincial Government or of an officer authorised in this behalf by the Provincial Government, dismantle any Dismantling a factory or a mine.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 12th March, 1948, Part IV, page 263; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 23rd March, 1948.

(Sections 4, 5.)

factory or mine or remove from a factory or a mine any spare parts kept for maintaining the machinery of the factory or the mine in order:

Provided that no such permission shall be required for removing spare parts from one factory or mine for use in another factory or mine within the Province of West Bengal:

Provided further that intimation in respect of such removal shall be given to the Provincial Government within seven days from the date of such removal.

(2) Any person who contravenes any of the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

Offences by corporations or firms.

4. Where a company or other corporate body, or a firm contravenes any of the provisions of sub-section (1) of section 3, every director of such company or corporate body, every partner of such firm and every manager or secretary or other officer or agent of such company or corporate body or firm shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Powers of entry, examination, taking evidence, etc.

5. (1) Subject to any rules made by the Provincial Government, any officer authorised in this behalf by that Government, may, if he has reason to believe that any person has contravened any of the provisions of sub-section (1) of section 3 within the local limits for which he is so authorised,—

- (a) enter with such assistants (if any), being persons in the service of the Crown as he thinks fit, any place;
- (b) make such examination of the place and of any machinery, books or documents therein and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act; and
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

(2) Any person who wilfully obstructs an officer authorised under sub-section (1) in the exercise of any power conferred by that sub-section, or fails to produce on demand any book or document in his custody or to comply with any demand for information, or knowingly or recklessly makes to such officer a statement false in a material particular shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

*The West Bengal Factories and Mines (Control
of Dismantling) Act, 1948.* 395

XIII of 1948.]

(Sections 6—8.)

6. No prosecution for any offence under this Act shall be instituted except by or with the previous sanction of the Provincial Government or the officer authorised by the Provincial Government for the purposes of sub-section (1) of section 3. **Cognizance of offences.**

7. No suit, prosecution, or other legal proceeding shall lie against any person for anything which is in good faith done, or intended to be done, under this Act. **Bar of legal proceedings.**

8. (1) The Provincial Government may make rules for carrying out the purposes of this Act. **Power to make rules.**

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide—

(a) for the procedure for the grant of the permission referred to in sub-section (1) of section 3;

(b) for an appeal against a refusal to grant the permission referred to in sub-section (1) of section 3 when such refusal is by an officer authorised in pursuance of that section; and

(c) for regulating the manner in which officers authorised under sub-section (1) of section 5 shall exercise their powers.

West Bengal Act XIV of 1948

THE WEST BENGAL PRIVATE FORESTS ACT, 1948.

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West Bengal Act XIV of 1948¹

THE WEST BENGAL PRIVATE FORESTS ACT, 1948.

[23rd April, 1948.]

An Act to provide for the conservation of private forests and for the afforestation in certain cases of waste-lands in West Bengal.

WHEREAS it is expedient to provide for the conservation of forests and for the afforestation of waste-lands in West Bengal where such forests or lands are not the property of the Crown or where the Crown has no proprietary right over such forests or lands;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the West Bengal Private Forests Act, 1948. Short title, extent and commencement.

(2) It extends to the whole of West Bengal.

(3) This section shall come into force at once and the remaining provisions of this Act, in whole or in part, shall come into force in such areas and on such dates as the Provincial Government may, by notification, specify and for this purpose different dates may be specified for different provisions of this Act and for different areas.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) "Appellate Committee" means a committee the procedure of which shall be as prescribed, appointed by the Provincial Government in respect of a notified area to hear appeals under this Act consisting of three members of whom the Chairman shall be a Revenue Officer not below the rank of a Collector, one member shall be a member of the Indian Forest Service or the West Bengal Forest Service not below the rank of a Deputy Conservator of Forests and the other member shall be an owner of a private forest who shall be selected in the prescribed manner from amongst the owners of private forests in such notified area;

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 15th January, 1948, Part IV; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 5th March, 1948.

²Sections. 2 to 64 of the Act were brought into force in the district of Midnapore except the Garbeta police-station in the Sadar subdivision of the said district and also in the district of Bankura, on the 22nd April, 1948, *Vide* Notification No. 2524 For., dated the 22nd April, 1948, published at page 412 of the *Calcutta Gazette, Extraordinary*, of the 23rd April, 1948.

(Chapter I.—Preliminary.—Section 2.)

- (2) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;
- (3) "conservation", used in reference to a forest, includes such measures as are necessary in the opinion of the Regional Forest-officer for the prevention or remedying of the erosion of the soil or any flood or landslide;
- (4) "Controlled forest" means a forest in respect of which a working plan has been approved under sub-section (1) of section 4;
- (5) "forest" includes any land recorded as forest in a record of rights prepared under Chapter X of the Bengal Tenancy Act, 1885;
- (6) "forest-offence" means an offence punishable under this Act or under any rule made thereunder;
- (7) "Forest-officer" means any person whom the Provincial Government or any officer empowered by the Provincial Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;
- (8) "forest-produce" includes—
- (a) the following whether found in, or brought from, a forest or not, that is to say:—
- (i) timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, *mahua* flowers, *mahua* seeds, *kuth* and myrabolams, and
- (ii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
- (b) the following when found in, or brought from, a forest, that is to say:—
- (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,
- (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants, and
- (iii) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);

VIII of
1885.

(Chapter I.—Preliminary.—Section 2.)

- (9) "Forest Settlement-officer" means an officer, who shall ordinarily be a Revenue Officer, appointed by the Provincial Government to perform the functions of a Forest Settlement-officer under this Act and includes a Board, the procedure of which shall be as prescribed, appointed by the Provincial Government to perform such functions, consisting of not more than three officers of whom at least two shall be Revenue Officer;
- (10) "notification" means a notification published in the *Official Gazette*;
- (11) "notified area" means an area specified in a notification issued under sub-section (1) of section 3;
- (12) "owner" includes any mortgagee in possession, lessee, common manager, receiver appointed by a competent Court and any person holding any property in trust and also includes a Court of Wards in respect of property under the superintendence or charge of such Court;
- (13) "prescribed" means prescribed by rules made under this Act;
- (14) "private forest" means a forest which is not the property of the Crown or over which the Crown has no proprietary right;
- (15) "Regional Forest-officer" means a Forest-officer appointed by the Provincial Government as such by a notification for a notified area;
- (16) "river" includes any stream, canal, creek or other channel, natural or artificial;
- (17) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;
- (18) "tree" includes palms, bamboos, stumps, brush-wood and canes;
- (19) "vested forest" means a forest of which the control has been vested in a Regional Forest-officer by a notification under sub-section (2) of section 6 or under section 7 or under section 11 and includes any forest deemed to be, or managed as, a vested forest under this Act;
- (20) "waste-land" means any waste-land which is not the property of the Crown or over which the Crown has no proprietary right;
- (21) "working plan" means a written scheme for the management and treatment of a forest; and
- (22) "year" means a year beginning on the 1st day of April.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 3.)

CHAPTER II.

CONSERVATION OF PRIVATE FORESTS AND AFFORESTATION OF WASTE-LANDS.

Prepara-
tion of,
and
ap
re-
vision in
respect
of work-
ing plans
for private
forests.

3. (1) The Provincial Government may, by notification, direct that every owner of a private forest which is not a vested forest, but which is situated within such area as may be specified in the notification, shall prepare in the prescribed manner and submit within the period mentioned in the notification to the Regional Forest-officer a working plan for the conservation of such private forest.

(2) On the expiry of the period mentioned in the notification under sub-section (1), the Regional Forest-officer shall, after considering each working plan submitted to him under that sub-section, and after consultation in the manner prescribed with the Conservator of Forests of the forest circle within which such forest is situated, by an order in writing, accept the working plan or modify it in such manner as he may consider necessary or substitute another working plan for it.

(3) If any owner of such private forest does not submit a working plan within the period specified in the notification issued under sub-section (1), the Regional Forest-officer may, after consultation in the manner prescribed with the Conservator of Forests of the forest circle within which such forest is situated, prepare a working plan in respect of such forest.

(4) When the Regional Forest-officer by an order in writing modifies any working plan under sub-section (2) or substitutes another working plan under that sub-section for the working plan submitted under sub-section (1), he shall cause a copy of such order to be served in the prescribed manner upon the owner of such private forest to which such working plan relates and such owner may, within sixty days of the date of service of such order, appeal against such order to the Appellate Committee and the Appellate Committee may thereupon, after giving such owner an opportunity of being heard, by an order in writing, either accept the working plan with or without modifications or reject it and the decision of the Appellate Committee on every such appeal shall, subject to the provisions of sub-section (5), be final.

(5) The Board of Revenue may, on application by an owner of a private forest for revision of an order of the Appellate Committee passed in appeal under sub-section (4), and if such application is made within thirty days from the date of the order, call for the record of the appeal in which the order was passed and on receipt of such record, after giving such owner an opportunity of being heard, may, if it does not see fit to reject the application, direct the Appellate Committee by an order in writing to make such modifications in the working plan accepted by the said Committee under sub-section (4) as may be specified in such order in writing.

XIV of 1948.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 4.)

(6) The Board of Revenue shall, as soon as may be after an application for revision is disposed of under sub-section (5), communicate the order passed by it on such application to the Appellate Committee, and on receipt of such order the Appellate Committee shall, where the Board of Revenue has directed any modification to be made in such working plan, modify it accordingly.

4. (1) When the Appellate Committee accepts any working plan with or without modification under sub-section (4) of section 3, or modifies any working plan under sub-section (6) of the said section, or the Regional Forest-officer accepts, modifies or substitutes, any working plan under the said section, or prepares any working plan under the said section, such Committee or officer shall by an order in writing approve such working plan or the working plan as so modified by the Committee or such officer, as the case may be, and every working plan so approved shall be deemed for the purposes of this Act to be an approved working plan : Approved working plans.

Provided that the Regional Forest-officer shall not so approve any working plan that he has modified or substituted by an order under sub-section (2) of section 3 if,—

- (a) an appeal against the order has been made to the Appellate Committee; or
- (b) where no such appeal has been made, the time within which such appeal may be made has not expired :

Provided further that the Appellate Committee shall not so approve any working plan accepted by it with or without modification by an order under sub-section (4) of section 3 if,—

- (a) where an application for revision of the order has been made to the Board of Revenue, the order of the Board of Revenue on such application has not been received by such Committee; or
- (b) where no such application for revision has been made, the time within which such application may be made has not expired.

(2) A copy of every approved working plan shall be sent in the prescribed manner by the Regional Forest-officer to the owner of the private forest to which it relates and the owner shall thereupon manage such forest in accordance with such plan and shall carry out all the terms and conditions thereof.

(3) At any time after five years from the date of approval of a working plan under sub-section (1), or with the previous sanction of the Provincial Government at any time within the said period of five years, a Regional Forest-officer may, after consultation in the manner prescribed with the Conservator of Forests of the forest circle within which the forest to which such working plan relates is situated, by an order in writing,

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 5, 6.)

modify the approved working plan in such manner as he considers necessary and the provisions of sub-sections (4), (5) and (6) of section 3 and sub-sections (1) and (2) of this section shall apply to every plan so modified :

Provided that nothing in this section shall prevent the owner after the expiry of the said period of five years from applying in writing to the Regional Forest-officer for the modification of the working plan in such manner as may be specified in the application and if the Regional Forest-officer, after giving the owner an opportunity of being heard, does not see fit after such consultation as aforesaid so to modify the working plan, he shall record an order to that effect and the owner may within thirty days from the date of such order appeal against such order to the Appellate Committee and an application for revision shall also lie to the Board of Revenue from any order passed by the Appellate Committee on such appeal if presented within thirty days from the date of such order and the decision of the Appellate Committee on such appeal shall, subject to such revision by the Board of Revenue, be final.

Prohibition of leases and extension of terms of existing leases of private forests after issue of notification under section 3 (1).

5. After the publication of a notification under sub-section (1) of section 3, no owner of a private forest in the notified area shall enter into any new lease or extend the term of any existing lease in respect of such forest until the working plan in respect of such forest has been approved under sub-section (1) of section 4 except with the previous sanction of the Provincial Government and, after such working plan has been so approved, except in accordance with the terms and conditions of such plan and any lease entered into or any extension of the term of any lease granted in contravention of the provisions of this section shall, notwithstanding anything contained in any other law for the time being in force, be void and have no effect.

Penalty for the violation of working plan.

6. (1) If after an approved working plan in respect of any private forest has been sent under sub-section (2) of section 4 to the owner of such forest, such owner fails or neglects to carry out any of the terms and conditions of such plan, he shall be punishable with fine which may extend to five hundred rupees :

Provided that no prosecution shall be instituted under this sub-section unless the Regional Forest-officer has served in the prescribed manner a notice on such owner specifying the terms and conditions of the working plan which such owner has failed or neglected to carry out and requiring such owner to take such steps for carrying them out as are specified in the notice within thirty days from the date of service of such notice and unless such owner has failed to comply with such notice.

(2) If the owner of a private forest is convicted a second or subsequent time under sub-section (1) for the failure or neglect to carry out any of the terms and conditions of the

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(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 7, 8.)

working plan in respect of such forest, the Provincial Government may, by a notification, direct that the control of such forest shall be vested in such Regional Forest-officer for such period as may be specified in such notification :

Provided that no such notification shall be issued until such owner has been called upon by notice in writing by the Regional Forest-officer within sixty days of such conviction to show cause before the Appellate Committee within such time as may be specified in the notice as to why such notification should not be issued and until the Appellate Committee, after considering the cause, if any, shown by him and any evidence which he may produce in support thereof, has recommended to the Provincial Government that such notification should be issued.

(3) Nothing in sub-section (1) shall render any owner of any private forest liable to conviction for any deviation from any approved working plan if such deviation has been previously sanctioned by the Regional Forest-officer on application made by such owner in that behalf to such officer or by the Appellate Committee on an appeal from an order of the Regional Forest-officer refusing to sanction such deviation presented by the owner to such committee within thirty days from the date of such order.

7. Notwithstanding anything contained in sections 3 and 4 or in sub-section (2) of section 6, if the Provincial Government is satisfied that the conservation of any private forest in a notified area should not be left to the owner thereof, the Provincial Government may, by a notification specifying the reasons for so doing, direct that the control of such forest shall be vested in such Regional Forest-officer for such period as may be specified in the notification :

Vesting of forest in a Regional Forest-officer.

Provided that no such notification shall be issued until,—

- (a) the Regional Forest-officer has, by notice in writing, called upon the owner of such forest to show cause before the Appellate Committee within such period as may be specified in such notice why the control of such forest should not be so vested, and
- (b) the Appellate Committee after considering the cause, if any, shown by the owner and any evidence which the owner may produce in support of the same has recommended that such notification should be issued.

8. (1) Subject to rules made under this Act, loans may be granted on the recommendation of the Appellate Committee by such officer as may be empowered in this behalf by the Provincial Government to any owner of a controlled forest or of a vested forest who, in the opinion of the Appellate Committee, is likely to suffer unduly owing to any temporary reduction of his income resulting from any action

Forest loans.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 9.)

taken under section 4 or sub-section (2) of section 6 or section 7 or to any owner of a controlled forest to enable such owner to pay any compensation payable by him under sub-section (6) of section 10 or sub-section (2) of section 25.

(2) An application for such a loan shall be made in the prescribed manner to the Appellate Committee and shall state the following particulars, namely:—

- (a) the amount of the loan required,
- (b) the reasons for which it is necessary, and
- (c) the period for which it is required.

(3) After considering in the prescribed manner the application made under sub-section (2) and any evidence that may be produced in support thereof, the Appellate Committee shall state in writing its opinion as to whether or not a loan should be given, and, if it recommends the grant of a loan, shall forward the application to the officer empowered under sub-section (1) with its opinion, stating the reasons for such recommendation and specifying the following particulars, namely:—

- (a) the amount of the loan that should be granted and the rate of the interest that should be charged,
- (b) the instalments in which the loan should be advanced, and
- (c) the period after which and the instalments in which the loan should be repaid.

(4) Subject to rules made under this Act, all loans granted under sub-section (1), all interests, if any, chargeable thereon and costs, if any, incurred in granting such loans shall, when they become due, be recoverable by the Collector as if they were arrears of land revenue due in respect of the controlled forest or the vested forest of which the borrower was the owner at the time the loan was granted:

Provided that no proceeding in respect of any such forest under this sub-section shall affect any interest in that forest which existed before the date of the order granting the loan other than the interest of the borrower and of mortgagees of, or persons having charges on, the interest of the borrower.

9. (1) If, after consultation in the prescribed manner with the Conservator of Forests of the forest circle within which the forests are situated, a Regional Forest-officer is of the opinion that it is impossible otherwise to secure the conservation of two or more forests, belonging to different owners, of which the control has been vested in him by a notification under sub-section (2) of section 6 or under section 7, he may record an order that such forests shall be managed under one working plan as if they belonged to one owner, and shall cause a copy of such order to be served in the prescribed manner on the owner of each such forest.

Amalgamation of two or more vested forests under one working plan.

Act No. 10 of 1948

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 10.)

(2) The Regional Forest-officer may, at any time, after consultation in the manner referred to in sub-section (1), by order in writing rescind or modify an order passed by him under that sub-section and a copy of every order passed under this sub-section shall be served in the prescribed manner on the owner of each such forest.

(3) Any owner or other person interested in any such forests may, within thirty days from the date on which the copy of any order passed under sub-section (1) or sub-section (2) is served on him, appeal against such order to the Appellate Committee and the decision of the Appellate Committee on such appeal shall, subject to the provisions of sub-section (4), be final.

(4) The Board of Revenue may on application made within thirty days from the date of any order of the Appellate Committee passed in appeal under sub-section (3), revise such order.

10. (1) The Provincial Government may, if it is satisfied on application made by the owner of a controlled forest, or by the Regional Forest-officer in whom the control of a private forest is vested under this Act, that any land adjoining such forest has not been cultivated during the three years immediately preceding the year in which such application is made and that such land is suitable for afforestation, by notification, announce its intention to declare such land to be liable to be made over to the owner of such controlled forest or vested forest, as the case may be.

Afforestation of land adjoining a forest.

(2) Every notification issued under sub-section (1) shall specify a period within which objections to the proposed declaration may be submitted by any person interested in such land to the Appellate Committee and a copy of every such notification shall be served in the prescribed manner on the person entitled to cultivate such land.

(3) After the expiry of the period so specified in a notification issued under sub-section (1), the Appellate Committee shall hear the objections, if any, submitted by the person entitled to cultivate such land or any other person interested in such land and any evidence which any such person may produce in support of the same and forward the objections so submitted and its opinion thereon to the Provincial Government.

(4) If, after considering the objections and the opinion of the Appellate Committee forwarded under sub-section (3), the Provincial Government is of opinion that such land should be declared to be liable to be made over to the owner of the controlled or vested forest referred to in sub-section (1), the Provincial Government shall issue a notification—

(a) declaring such land to be liable to be made over to the owner of such forest to be specified in the notification,

(b) specifying as nearly as possible the situation and limits of such land, and

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 10.)

(c) appointing a Forest Settlement-officer to determine, subject to any rules made under this Act, by an order in writing,—

(i) what rights in or over such land shall be extinguished, and

(ii) what rent, if any, shall be payable by the owner of such forest to any landlord of such land.

(5) When a notification has been issued under sub-section (4), the amount of the compensation payable under sub-section (6) to every person whose rights as specified by the Forest Settlement-officer under sub-clause (i) of clause (c) of sub-section (4) are to be extinguished shall be determined, subject to any rules made under this Act, in the manner and in accordance with the principles hereinafter set out, that is to say,—

(i) when the amount of compensation can be fixed by the Forest Settlement-officer appointed under clause (c) of sub-section (4) by agreement, it shall be paid in accordance with such agreement;

(ii) where no such agreement can be reached, the Provincial Government shall appoint as arbitrator a person who has exercised the powers of a District Judge in West Bengal or who possesses such qualifications as are normally required for appointment to the post of District Judge in West Bengal;

(iii) at the commencement of the proceedings before the arbitrator the owner of the forest, or the Regional Forest-officer by whom the compensation is payable, and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;

(iv) the arbitrator in making his award shall have regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable;

I of 1894.

(v) an appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf;

(vi) save as provided in this sub-section and in any rules made under this Act, nothing in any law for the time being in force shall apply to arbitrations under this sub-section.

(6) The amount of compensation determined under sub-section (5) shall be paid in the prescribed manner, in the case where the notification under sub-section (1) was issued on the application of the owner of a controlled forest, by such owner, and in the case where such notification was issued on the application of a Regional Forest-officer, by such officer out of the profits of the vested forest adjoining

XIV of 1946

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 11.)

such land, to the person entitled to such compensation and, on payment of such compensation, the land shall be made over by the Forest Settlement-officer appointed under clause (c) of sub-section (4) to the owner of the controlled or vested forest specified in the notification issued under that sub-section and shall thereupon vest in such owner and all rights in or over such land specified by the said officer under sub-clause (i) of the said clause shall with effect from the date on which such land is so made over be extinguished.

(7) When any land is made over under sub-section (6) to the owner of a forest, it shall, with effect from the date on which it is so made over, be deemed to be a private forest.

(8) When any such land is made over under sub-section (6) to the owner of a vested forest which adjoins such land, the control of such land shall be vested in the Regional Forest-officer in whom the control of such forest is for the time being vested and the land shall, for the purposes of this Act, be deemed to be a vested forest.

(9) When any such land is made over under sub-section (6) to the owner of a controlled forest which adjoins such land, the Regional Forest-officer may, after consultation in the prescribed manner with the Conservator of Forests of the forest circle within which such controlled forest is situated, by an order in writing, a copy of which shall be served on such owner in the prescribed manner, either direct that the approved working plan in respect of such controlled forest shall be deemed to be the working plan approved for such land under sub-section (1) of section 4 or require such owner to prepare in the prescribed manner and submit within the period to be mentioned in such order to such officer a working plan in respect of such land.

(10) Where the owner of a controlled forest is required under sub-section (9) to prepare and submit a working plan in respect of the land made over to him under sub-section (6), the provisions of sections 3 and 4 shall apply to such working plan as if such owner has been required to prepare such working plan under sub-section (1) of section 3.

11. (1) If it appears from the report of a Regional Forest-officer that any waste-land which is lying uncultivated for not less than three years is suitable for afforestation and that the owner of such land is unwilling or unable to cultivate it by growing therein agricultural crops, or to use it for the purposes of horticulture to the satisfaction of such officer or to afforest it, the Provincial Government may, by a notification, direct that the control of such land shall be vested in a Regional Forest-officer to be specified in the notification for the purpose of afforestation for such period as may be stated in the notification:

Afforestation of other land.

Provided that the Provincial Government shall not issue any notification under this sub-section without considering

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whether or not such land can more advantageously be used for the purposes of agriculture or horticulture than for the purposes of afforestation:

Provided further that no such notification shall be published until a notice has been issued by such Regional Forest-officer, calling upon the owner of such land and any other person interested therein to show cause before the Appellate Committee within such period as may be specified in the notice why the notification should not be published and until the cause, if any, shown and any evidence that may have been produced in support of the same before the Appellate Committee and the opinion of the Appellate Committee thereon have been considered by the Provincial Government.

(2) Any land in respect of which a notification has been published under sub-section (1) shall be deemed to be a vested forest for the purposes of this Act.

(3) When all expenses incurred by the Provincial Government for the afforestation of any such land have been recouped, the profits resulting from such afforestation shall, during the period the control of such land remains vested in a Regional Forest-officer, be divided in equal shares between the Provincial Government and the owner of the land.

Apportionment of rents of forests held under a lease jointly with other lands and the division of the tenure or holding comprising a forest.

12. (1) Notwithstanding anything contained in any other law for the time being in force, where a private forest or any waste-land is, at the date of publication of a notification vesting the control thereof in a Regional Forest-officer under sub-section (2) of section 6 or under section 7 or under section 11, as the case may be,—

(a) held under a lease granted by the owner of such forest or land before the date of publication of such notification, and such lease comprises not only the areas included in such forest or land but also other areas, or

(b) held by the owner of such forest or land as part of a tenure or holding jointly with other lands,

the Collector of the district may, on application made in this behalf by such Regional Forest-officer,—

(i) in the case referred to in clause (a), by an order in writing, apportion, subject to rules made under this Act, the rent payable under the lease between the areas included within the vested forest and other areas comprised within the lease on the basis of their respective assets, and

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 13, 14.)

(ii) in the case referred to in clause (b), by an order in writing direct the division of such tenure or holding in such manner that a separate tenure or holding is formed with the lands included within the vested forest and also direct such distribution of the rent payable in respect of such tenure or holding between the two separate tenures or holdings so formed as he deems fair and equitable:

Provided that no order shall be passed under this sub-section without giving, in the case of an order passed under clause (i) the lessor and the lessee of such forest or land, and in the case of an order passed under clause (ii) the owner of such forest or land and the landlord or landlords, or their common agent, if any, of the tenure or holding, a reasonable opportunity of being heard.

(2) An appeal shall lie from every order passed under sub-section (1) to the Commissioner of the Division if it is presented within thirty days from the date of such order and the decision of the Commissioner on such appeal shall be final and shall not be questioned in any Court.

Explanation.—In this section, “lease”, “lessor” and “lessee” have the same meanings as in the Transfer of Property Act, 1882, and “tenure” and “holding” have the same meanings as in the Bengal Tenancy Act, 1885.

IV of 1882.
VIII of
1885.

13. Where a private forest or waste-land of which the control has been vested in a Regional Forest-officer by a notification under sub-section (2) of section 6 or under section 7 or under section 11 is, at the date of publication of such notification, held either exclusively or jointly with other property under a lease granted by the owner of such forest or land before such date, the rent payable under the lease or under an order of apportionment made under clause (i) of sub-section (1) of section 12 in respect of such forest or land during the period such forest or land remains so vested in the Regional Forest-officer shall, subject to the prior payment of the land-revenue, if any, due to the Government thereupon, be a first charge upon the leasehold interest in such forest created by such lease.

Rent to be a charge on the leasehold interest in a vested forest.

14. The Provincial Government may, if it thinks it expedient, direct the Collector to partition off that part of an estate which comprises a vested forest into a separate estate; and the demand in respect of land-revenue and cess for which the original estate was liable shall on such partition be assessed upon and divided between the two separate estates so formed respectively in such manner as the Provincial Government may direct.

Power to order a vested forest to be formed into a separate estate.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 15, 16.)

Power to exempt an estate of which a vested forest forms part from sale for arrears of revenue.

15. The Provincial Government may, if it so considers expedient, by a notification, exempt any estate, and subject to the provisions of section 14 of the Bengal Land-revenue Sales Act, 1859, every share or part of an estate for which a separate account has been opened under section 10, or section 11 of the said Act, or under section 70 of the Land Registration Act, 1876, of which a vested forest forms part, from sale for arrears of Government revenue accruing during the period the control of such forest remains vested in a Regional Forest-officer under sub-section (2) of section 6 or under section 7 or under section 11 or during such part of such period as may be specified in such notification :

XI of 1859.

Ben. Act VII of 1876.

Provided that where any such estate, share or part is so exempted, all such arrears of revenue shall be the first charge upon the sale-proceeds of such estate, share or part which may be sold otherwise than for such arrears of revenue.

Determination of cost of management of vested forest and distribution of net profit.

16. (1) The cost of any extra staff required for the management of a vested forest in each year shall be determined in the prescribed manner by the Regional Forest-officer and shall be recovered by him in that year, or in subsequent years, from the sale of the forest-produce of such forest.

(2) The cost of the operations of any Forest Settlement-officer and such part of the cost of a Regional Forest-officer and of his staff as is proportionate to the work done by them in connection with the management of a vested forest shall be included in the cost of management.

(3) Any amount due in respect of a loan made under section 8 to the owner of a vested forest shall be included in the cost of management of such forest.

(4) Any amount paid as compensation by the Regional Forest-officer under sub-section (6) of section 10 out of the profits of a vested forest or paid as compensation by the Regional Forest-officer under sub-section (2) of section 25, and to be recouped under that sub-section from the profits of a vested forest, shall be included in the cost of management of such forest.

(5) Until otherwise determined by a competent Court, the respective shares of the owners of a vested forest shall be determined by a Forest Settlement-officer in the prescribed manner, and thereafter, the net profits in respect of such forest, which shall be calculated in the prescribed manner, shall be distributed among the various owners thereof in proportion to their respective shares as so determined.

(6) In each year the Regional Forest-officer shall record in a statement the cost of management with which each vested forest shall be charged and any amount which shall be paid in respect of the net profits calculated under sub-section (5) and shall cause a copy of such statement to be served in the prescribed manner on the owner of such forest.

Act of 1948

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 17,18.)

17. (1) The Provincial Government may impose in the prescribed manner on an acreage basis a cess on all private forests within a notified area with effect from such date, not being before the expiry of ten years from the date of publication of a notification under section 3, as the said Government may appoint. Imposition of cess.

(2) Such cess shall be so calculated as to yield a sum not greater than that which is sufficient to meet the cost of the Regional Forest-officer and his staff, including any expenses incurred in connection with their work to be determined in the prescribed manner.

(3) If the Regional Forest-officer or his staff does any work in connection with a Government forest, a proportionate deduction shall be made from the cost of such Regional Forest-officer and of his staff before the cess is calculated under sub-section (2).

**Ben. Act
III of 1913.**

(4) Every cess imposed under sub-section (1) shall be recoverable as a public demand under the Bengal Public Demands Recovery Act, 1913.

(5) The Provincial Government may, by general or special order, exempt any private forest in a notified area from the payment of any cess imposed under sub-section (1) or of any portion of such cess for such period as may be specified in such order.

18. (1) If the owner of a vested forest satisfies the Appellate Committee— Release of vested forest to the owner.

(a) at any time after the expiry of fifteen years from the date of the notification by which the control of such forest has been vested in a Regional Forest-officer, that—

(i) the control of such forest may be restored to him without undue risk of detriment to its conservation, and

(ii) the cost of its management as determined under the provisions of sub-section (1) of section 16 has been recovered in full, or

(b) at any time after the expiry of thirty years from the date of such notification, that the cost of management of such forest as determined under the provisions of that sub-section has been recovered,

the Appellate Committee shall by order direct that with effect from a date, to be specified in such order, the control of such forest shall cease to be vested in the Regional Forest-officer:

Provided that no such order shall be made in the case of any forest, whether any working plan in respect of such forest has been previously approved under section 4 or not, until—

(a) the Appellate Committee has by an order called upon the owner of such forest to prepare in the

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Chapter III.—Rights in Forests.—Sections 19—21.)

prescribed manner and to submit within such period as may be specified in such order to the Regional Forest-officer a working plan in respect of such forest, and

- (b) a working plan has been approved in respect of such forest in accordance with the provisions referred to in sub-section (2):

Provided further that no such order shall be passed regarding a forest in respect of which there subsists an order passed under sub-section (1) of section 9, unless the owners of all the forests, in respect of which the order under the said sub-section was passed, have satisfied the Appellate Committee that there will be no undue risk of detriment to the conservation of any of such forests if the control of the said forest ceases to be vested in the Regional Forest-officer.

(2) When the owner of a forest has been required under the first proviso to sub-section (1) to prepare and submit a working plan in respect of such forest, the provisions of sections 3 and 4 shall apply to such working plan as if such owner has been required to prepare such working plan under sub-section (1) of section 3.

(3) The fact that the control of any forest has ceased to be vested in a Regional Forest-officer shall not operate to revive any right which may have been extinguished or modified by a proclamation under section 28.

CHAPTER III.

RIGHTS IN FORESTS.

Control and demarcation of vested forest.

19. When a notification has been published in respect of any forest under sub-section (2) of section 6 or under section 7 or under section 11, the control of such forest shall be vested in the Regional Forest-officer, who shall forthwith proceed to demarcate it.

Appointment of Forest Settlement-officer.

20. (1) A Forest Settlement-officer shall be appointed by the Provincial Government in respect of every forest of which the control is vested in a Regional Forest-officer by a notification under sub-section (2) of section 6 or under section 7 or under section 11, and may be appointed in respect of any controlled forest on the application made in this behalf to the Provincial Government by its owner.

(2) Such appointment shall be made by a notification specifying in such notification, as nearly as may be possible, the situation and limits of such forest.

Bar of accrual of rights.

21. After the issue of a notification under section 20, no right shall be acquired in or over the land comprised in such notification, except by succession or under grant or contract in writing made or entered into, with the previous sanction of the Provincial Government, by or on behalf of the owner

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(Chapter III.—Rights in Forests.—Sections 22–25.)

or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose, and cutting, conversion or removal of timber or the collection, manufacture or removal of other forest-produce, shall be made in such land except in accordance with such rules, if any, as may be made by the Provincial Government in this behalf.

22. (1) The Forest Settlement-officer shall publish in the neighbourhood of the forest in respect of which he has been appointed, a proclamation in Bengali and, if any other language has been prescribed in this behalf for the local area in which such forest is situated, also in such other language—

Proclamation by Forest Settlement-officer.

(a) specifying, as nearly as possible, the situation and limits of such forest;

(b) explaining the measures proposed for, and the consequences which will ensue on, the conservation of such forest; and

(c) requiring every person who claims any right, other than a right of ownership, over such forest or over any forest-produce from such forest, to give to such Forest Settlement-officer, within a period of not less than three months to be stated in the proclamation, particulars, either in writing or by word of mouth, of such right and the amount and nature of the compensation, if any, claimed in respect thereof.

(2) The Forest Settlement-officer shall take down in writing all statements made by word of mouth under clause (c) of sub-section (1).

23. (1) The Forest Settlement-officer shall at some convenient place inquire into the existence of any rights which are claimed under clause (c) of sub-section (1) of section 22 or which may be ascertained by him from any other source.

Inquiry by Forest Settlement-officer—

(2) The Forest Settlement-officer shall give a hearing to the Regional Forest-officer or an officer authorised by such Regional Forest-officer in writing, in this behalf, to satisfy himself as to the necessity of modifying or extinguishing any right in the interests of the conservation of the forest.

24. For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:—

Powers of Forest Settlement-officer.

(a) power to enter, by himself or by any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

25. (1) After completion of the inquiry under section 23, the Forest Settlement-officer shall, by an order in writing—

Specification and modification of rights.

(a) record the nature of the rights existing at the time of the notification under section 20, and

(Chapter III.—Rights in Forests.—Sections 26—28.)

- (b) direct the modification or extinction of any such right, other than a right of ownership, in the interests of the conservation of the forest.

(2) When the Forest Settlement-officer directs under clause (b) of sub-section (1) the modification or extinction of any right, he shall, unless the person whose rights are affected has come to an agreement as to the amount of compensation payable to him, determine what compensation shall be awarded to such person, and the amount of any compensation payable under this sub-section to any such person shall be paid in the prescribed manner, in the case where the forest to which such right relates is a controlled forest, by the owner of such forest, and in the case where such forest is a vested forest, by the Regional Forest-officer in whom the control of such forest is vested under this Act and every payment so made by the Regional Forest-officer shall be recouped from the profits of the vested forest to which such right relates as part of the cost of management of such forest.

Appeals.

26. (1) An appeal may be presented against any order made under section 25 within ninety days from the date of such order to the Commissioner of the Division by an owner of a forest or by a Regional Forest-officer or by any person who has given particulars of his claims under sub-section (1) of section 22.

(2) Every such appeal shall be made by a petition in writing and shall be heard in accordance with the procedure for the time being applicable to the hearing of appeals in matters relating to land-revenue.

(3) The order of the Commissioner on such appeal shall, subject to the provisions of sub-section (4), be final.

(4) An application for revision shall lie to the Board of Revenue from an order of the Commissioner passed in appeal under this section if it is presented within thirty days from the date of such order.

Pleadings.

27. The Provincial Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or any appellate or revisional authority in the course of any inquiry, appeal or revision under this Act or before any arbitrator appointed to determine any compensation payable under sub-section (5) of section 10.

Extinction of rights.

28. (1) When the time within which appeals against orders under section 25 may be made has expired and, when any such appeal has been made under section 26, the time within which applications for revision of any order passed in such appeal may be made has also expired and all applications for revision under sub-section (4) of section 26 have been disposed of, the Forest Settlement-officer shall issue another proclamation specifying the rights which may be exercised in respect of the forest regarding which any such order under section 25 has been made and also specifying the date with effect from which all rights in respect of such forest which are not specified in such proclamation shall be extinguished.

~~REPEALED~~

(Chapter III.—Rights in Forests.—Chapter IV.—Penalties and Procedure.—Sections 29, 30.)

(2) A translation of such proclamation in Bengali and, if any other language has been prescribed in this behalf for the local area in which such forest is situated, also in such other language shall be published in the neighbourhood of such forest before the date so specified in such proclamation.

(3) With effect from the date so specified in such proclamation all rights in respect of such forest not specified in such proclamation shall be extinguished.

CHAPTER IV.

PENALTIES AND PROCEDURE.

29. (1) Any person who,—

Penalties
for breach
of rules.

- (a) fells, girdles, lops, taps, or burns any tree in a controlled or vested forest or strips off the bark or leaves from or otherwise damages, any such tree,
- (b) quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce from a controlled or vested forest,
- (c) breaks up or clears for cultivation or any other purpose any land in a controlled or vested forest,
- (d) sets fire to a controlled or vested forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any portion of such forest, or
- (e) permits cattle to damage any tree in a controlled or vested forest,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Any person contravening any rule made under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

30. (1) If it is proved to the satisfaction of the District Magistrate that in any vested forest—

Imposition of collective fine on the inhabitants in certain cases.

- (a) any cattle have been permitted to trespass,
- (b) any trees have been felled, girdled, lopped, tapped, burnt, or otherwise damaged,
- (c) any other forest-produce has been burnt or removed, or
- (d) any land has been broken up for any purpose, otherwise than in the exercise of any right in or over such forest with intent to cause detriment to the conservation of such forest, and if the District Magistrate is satisfied after enquiry that the inhabitants of any local area are concerned in the commission of any such offences or are in any way assisting persons in committing such offences, the District

(Chapter IV.—Penalties and Procedure.—Sections 31, 32.)

Magistrate may, by order in writing in which shall be specified the reasons for making such order, impose on the inhabitants of such area a collective fine which may extend to five hundred rupees or three times the value estimated by him of any forest-produce damaged, whichever is greater, and may, after such further enquiry, as he deems necessary, apportion such fine amongst such inhabitants and such apportionment shall be made according to the respective means of such inhabitants.

(2) Every order imposing a collective fine under sub-section (1) shall be forthwith published in the local area in such manner as the District Magistrate considers best calculated to bring the order to the notice of the inhabitants of the area concerned.

(3) The District Magistrate may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine.

(4) The portion of such fine payable by any person may be recovered from him as a fine or as a public demand under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of 1913.

(5) Every apportionment of collective fine made under sub-section (1) shall be subject to revision by the Commissioner of the Division on application made in that behalf to him by any person affected by such apportionment within thirty days from the date on which such apportionment is made and the decision of the Commissioner thereon shall be final.

Nothing
in sub-section (1) of
section 29
to prohibit
acts done
in certain
cases.

31. No act shall be an offence for the purposes of sub-section (1) of section 29 if it is done—

- (a) in the exercise of any right in or over such forest, or
- (b) in respect of a vested forest, with the permission in writing of a Forest-officer, or
- (c) in respect of a controlled forest, with the permission in writing of the owner thereof or of his authorised agent, or
- (d) in accordance with rules made under this Act.

Signature of
to
confession
tion.

32. (1) When there is reason to believe that a Forest-offence has been committed in respect of any forest-produce, such produce together with all tools, boats, motor vehicles, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Provided that, when the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

[REDACTED]

(Chapter IV.—Penalties and Procedure.—Sections 33—35.)

33. Any Forest-officer of a rank not inferior to that of a Ranger, or any Police-officer of a rank not inferior to that of a Sub-Inspector, who, or whose subordinate, has seized any tools, boats, motor vehicles, carts or cattle under section 32, may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Power to release property seized under section 32.

34. The Regional Forest-officer may cause information to be given to a Magistrate regarding any forest-offence which he has reason to believe to have been committed in respect of any forest-produce; and upon receipt of any such information, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Information to the Magistrate and procedure thereupon.

35. (1) If a Regional Forest-officer has not caused information to be given to a Magistrate under section 34 in respect of any forest-produce seized under sub-section (1) of section 32, he shall, if there is any doubt as to the person who is entitled to such produce, cause a notice to be published in such manner as may be prescribed containing a description of such produce and requiring any person who may claim the same to present a written statement of his claim to him within such period as may be specified in such notice.

Notice to claimants of seized forest-produce.

(2) If only one such statement of claim is presented in respect of any such forest-produce, the Regional Forest-officer shall, after making such inquiry as he thinks fit and recording his reasons in writing, either reject the claim or deliver the produce to the claimant.

(3) If more than one such statement of claim is presented, the Regional Forest-officer may, after making such inquiry as he thinks fit and after recording his reasons in writing, either deliver the forest-produce to such of the persons as he considers to be entitled thereto or refer the claimants to the Civil Court and retain such produce pending receipts of an order from the Civil Court for its disposal.

(4) Any person whose claim has been rejected under this section may, within three months from the date of rejection of such claim, institute a suit to recover possession of the forest-produce claimed by him; but no person shall be entitled to recover any compensation or costs against the Provincial Government, or against any Forest-officer, on account of rejection of such claim, or on account of the detention or removal of any forest-produce, or the delivery thereof to any other person under this section.

(5) No such forest-produce shall be subject to any process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been instituted as provided in this section.

(Chapter IV.—Penalties and Procedure.—Sections 36—41.)

Disposal
of un-
claimed
forest-
produce.

36. If no statement of claim is presented in respect of any such forest-produce after a notice has been published under sub-section (1) of section 35, or if a person whose claim has been rejected under that section omits to institute a suit under sub-section (4) thereof, the ownership of such forest-produce shall vest in the Provincial Government free from all encumbrances, or, when such forest-produce has been delivered to any person under sub-section (3) of that section, in such person free from all encumbrances not created by such person.

Disposal
of seized
property
after in-
formation
has been
given
under
section 34.

37. (1) Any forest-produce in respect of which a forest-offence has been committed and information has been given to a Magistrate under section 34 shall, on the conclusion of the trial for such offence, be made over to the owner of the forest from which it was derived or to any other person whom the Magistrate deems to be entitled to the same:

Provided that, if it is not known from which forest such produce was derived, such forest-produce and all tools, boats, motor vehicles, carts and cattle used in committing such forest-offence shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment which may be awarded under this Act for such offence.

Disposal
of confis-
cated pro-
perty on
conclusion
of trial.

38. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it has been confiscated, be taken charge of by a Forest-officer.

Procedure
when
offender
cannot be
found.

39. When the offender cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Regional Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiry of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

Procedure
as to per-
ishable
property
seized
under
section 32.

40. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 32 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Appeal
from
orders
under
section
37 or sec-
tion 39.

41. The officer who made the seizure under section 32, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed by the Magistrate under section 37 or section 39, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily ap-
pealable, and the order passed on such appeal shall be

[REV. of 1960.]

(Chapter IV.—Penalties and Procedure.—Sections 42—46.)

42. When an order for the confiscation of any property has been passed under section 37 or section 39, as the case may be, and the period limited by section 41 for an appeal from such order has expired, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Provincial Government free from all encumbrances.

Property when to vest in Government.

43. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Provincial Government from directing at any time the immediate release of any property seized under section 32.

Saving of power to release property seized.

Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful seizure.

45. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.

- (a) knowingly countenfeits upon any timber or standing tree in a controlled or vested forest a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber in a controlled or vested forest by or under the authority of a Forest-officer, or
- (c) alters, moves, destroys or defaces any boundary mark of any forest or waste-land to which the provisions of this Act apply or are applied,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

46. (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards under this Act.

Power to arrest without warrant.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case or to the officer-in-charge of the nearest police-station.

Act XLV
of 1860.

(Chapter IV.—Penalties and Procedure.—Sections 47—51.)

Power to release on a bond a person arrested.

47. Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 46, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case or before the officer-in-charge of the nearest police-station.

Power to prevent commission of offence.

48. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to try offences summarily.

49. The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the Provincial Government may try summarily, under the Code of Criminal Procedure, 1898, any forest-offence punishable with imprisonment for a term not exceeding six months, or with fine not exceeding five hundred rupees, or with both. Act V of 1898.

Power of Court to order payment of rewards out of fine.

50. Whenever a Court imposes a fine under this Act or confirms in appeal under this Act a sentence of fine or a sentence of which fine forms a part, for a forest-offence other than an offence specified in sub-section (1) of section 6 or section 44, the Court may, when passing judgment, order any portion of the fine recovered to be paid to the person whose information led to the detection of the offence.

Power to compound offences.

51. (1) The Provincial Government may, by notification, empower a Forest-officer—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in sub-section (1) of section 6, section 44 or section 45, a sum of money, not exceeding fifty rupees, by way of compensation for the offence which such person is suspected to have committed; and

(b) when any property of such person has been seized, to release the same.

(2) On the payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged, the property, if any, of such person seized shall be released, and no further proceedings shall be taken against such person or property.

(3) If the forest-offence has been committed in respect of a controlled forest, the amount of any compensation paid to a Forest-officer empowered under sub-section (1) to accept such compensation, or such part of such amount as the Forest-officer deems equitable in the circumstances, may, at the discretion of the Forest-officer, be paid to the owner of the controlled forest; but the amount of any compensation not so paid to the owner of a controlled forest and the

XIV of 1948.]

*(Chapter IV.—Penalties and Procedure.—Chapter V.—
Regional Forest-officers.—Sections 52—55.)*

amount of any compensation paid to such a Forest-officer if the forest-offence has been committed in respect of a vested forest shall be paid into the revenues of the Province.

(4) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger.

52. Notwithstanding anything contained in any other Act, when in any area in respect of which the Provincial Government has made rules under clause (b) of sub-section (2) of section 41 of the Indian Forest Act, 1927, any person is found to be moving forest-produce without a pass from an officer duly authorised to issue the same, the burden of proof that such person has not committed an offence under this Act in respect of such forest-produce shall lie on him.

Onus of proof.

XVI of 1927.

CHAPTER V.

REGIONAL FOREST-OFFICERS.

53. (1) The Provincial Government may invest any Regional Forest-officer with all or any of the following powers, that is to say:—

Provincial Government may invest Regional Forest-officers with certain powers.

- (a) power to enter upon any land, or to authorise any officer to enter thereon with servants and workmen, and to survey, demarcate and make a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
- (c) power to issue a search-warrant under the Code of Criminal Procedure, 1898; and
- (d) power to hold an enquiry into forest-offences, and, in the course of such enquiry, to receive and record evidence.

Act V of 1898.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

54. It shall be lawful for any officer authorised either generally or specially in this behalf by the Regional Forest-officer to enter with his subordinates and servants and workmen at any time upon any part of a controlled forest for the purpose of ascertaining whether there has been any violation of an approved working plan and to do any other acts which are in his opinion necessary for carrying out the purposes of this Act.

Power of officers.

55. All Forest-officers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Forest-officers deemed public servants.

Act XLV of 1860.

(Chapter V.—Regional Forest-officers.—Chapter VI.—
Rules.—Sections 56, 57.)

Indemnity
for acts
done in
good faith.

56. No suit shall lie against any public servant for anything done by him in good faith under this Act.

CHAPTER VI.

RULES.

Power to
make
rules.

57. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules to provide for all or any of the following matters, namely:—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce from controlled or vested forests in notified areas;
- (b) the granting of licenses to the inhabitants of towns and villages in the vicinity of controlled or vested forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons;
- (c) the granting of licenses to persons for selling or removing trees or timber or other forest-produce from controlled or vested forests for the purposes of trade, and the production and return of such licenses by such persons;
- (d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest-produce passing out of controlled or vested forests in notified areas;
- (g) the clearing and breaking up of land for cultivation or other purposes in controlled or vested forests in notified areas;
- (h) the protection from fire of timber lying in controlled or vested forests in notified areas;
- (i) the cutting of grass and pasturing of cattle in controlled or vested forests in notified areas;
- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in controlled or vested forests, and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879, is not in force;
- (k) the powers and duties of Forest-officers under this Act;

XXV of 1948-1

(Chapter VI.—Rules.—Section 57.)

- (l) the procedure of an Appellate Committee referred to in clause (1) of section 2 and the manner in which an owner of a private forest shall be selected as a member of such Appellate Committee;
- (m) the procedure of a Board appointed to perform the functions of a Forest Settlement-officer referred to in clause (9) of section 2;
- (n) the manner in which the working plan referred to in sub-section (1) of section 3 shall be prepared, the consultation referred to in sub-sections (2) and (3) of that section shall be made and the copy of the order referred to in sub-section (4) of that section shall be served;
- (o) the manner in which the approved working plan shall be sent under sub-section (2) of section 4 and the consultation referred to in sub-section (3) of that section shall be made;
- (p) the grant of loans referred to in sub-section (1) of section 8, the manner of making applications for such loans under sub-section (2) of that section, the manner in which such applications shall be considered and the recovery of such loans and the interest and costs in respect thereof under sub-section (4) of that section;
- (q) the manner in which the consultation referred to in sub-sections (1) and (2) of section 9 shall be made and copies of the orders passed under the said sub-sections shall be served;
- (r) the manner in which the copy of a notification issued under sub-section (1) of section 10 shall be served under sub-section (2) of that section, the determination by the Forest Settlement-officer of the matters specified in clause (c) of sub-section (4) of that section, the determination of compensation referred to in sub-section (5) of that section, the maximum amount of an award against which no appeal shall lie under clause (v) of that sub-section, the manner of payment of compensation under sub-section (6) of that section, and the manner in which the consultation referred to in sub-section (9) of that section shall be made, a copy of the order referred to in that sub-section shall be served and the working plan referred to in that sub-section shall be prepared;
- (s) the apportionment of rent referred to in clause (i) of sub-section (1) of section 12;
- (t) the manner in which the cost of management referred to in sub-section (1) of section 16 and the respective shares of the owners of a vested forest and the net profits in respect of such forest referred to in sub-section (5) of that section shall be determined or calculated and the copy of the statement referred to in sub-section (6) of that section shall be served;

(Chapter VI.—Rules.—Chapter VII.—Miscellaneous.—
Sections 58, 59.)

- (u) the manner in which the cess referred to in sub-section (1) of section 17 may be imposed and the costs and expenses referred to in sub-section (2) of that section shall be determined;
- (v) the manner in which the working plan referred to in clause (a) of the first proviso to sub-section (1) of section 18 shall be prepared;
- (w) the clearing of land for cultivation or for any other purpose and the cutting, conversion and the removal of timber and the collection, manufacture and removal of other forest-produce referred to in section 21;
- (x) the language other than Bengali referred to in sub-section (1) of section 22 and in sub-section (2) of section 28;
- (y) the manner in which the compensation referred to in sub-section (2) of section 25 shall be paid;
- (z) the manner in which the notice referred to in sub-section (1) of section 35 shall be published;
- (zz) the manner in which the forest-produce referred to in sub-section (3) of section 60 shall be sold; and
- (zzz) the manner of service of notices issued under this Act.

(3) In making any rule under this section the Provincial Government may provide that a contravention thereof shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Applica-
tion of
rules made
under
sections 41
and 42 of
the Indian
Forest
Act, 1927,
to transit
of forest-
produce
from
private
forests.

58. All rules made by the Provincial Government to regulate the transit of timber and other forest-produce under sections 41 and 42 of the Indian Forest Act, 1927, for the time being in force, shall apply so far as may be to the transit of all timber and other forest-produce from any private forest to which any of the provisions of this Act apply. XVI of 1927.

CHAPTER VII.

MISCELLANEOUS.

Conserva-
tion of
forest or
afforesta-
tion of
land at
the request
of owners.

59. Notwithstanding anything elsewhere contained in this Act, the Provincial Government may, on application made in this behalf in writing by the owner of any private forest or of any waste-land referred to in sub-section (1) of section 11 or, if there be more than one owner thereof, by the owners of shares therein amounting in the aggregate to at least one-half thereof, to the Collector of the district in which such forest or land is situated, by a notification, apply the

REV. OF 1948.]

(Chapter VII.—Miscellaneous.—Sections 60—62.)

provisions of this Act applicable to vested forests, subject to such restrictions or conditions as may have been determined by an agreement between the said Collector and such person or persons, to such forest or land and thereupon such forest or land shall be managed on behalf of such owner or owners as a vested forest in accordance with such provisions by a Regional Forest-officer specified in this behalf by the Provincial Government.

60. (1) All money payable to a Regional Forest-officer under this Act or under any rule made under this Act, other than money payable in respect of the cost of management of a vested forest, and all money payable to such officer on account of the price of any forest-produce or on account of expenses incurred in the execution of this Act in respect of such produce shall, if not paid when due, be recoverable as a public demand under the Bengal Public Demands Recovery Act, 1913.

Recovery of money due to Regional Forest-officer and lien on forest-produce for such money.

Ben. Act
III of
1913.

(2) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Regional Forest-officer until such amount has been paid.

(3) If such amount is not paid when due, the Regional Forest-officer may sell such produce in the prescribed manner, and after payment of the costs of the sale the proceeds thereof shall be applied first in discharging such amount.

(4) The surplus, if any, if not claimed within one year from the date of the sale by the person entitled thereto, shall be forfeited to the Crown.

61. Whenever it appears to the Provincial Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894.

Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.

I of 1894.

62. Subject to the provisions of this Act and to any rules made thereunder, every Regional Forest-officer—

(a) may do all such things requisite for the proper management of the forest the control of which has been vested in him under this Act as the owner of such forest might do for its management, and

(b) shall in the exercise of his powers and in the performance of his duties in relation to such forest be guided by such orders and instructions as may, from time to time, be issued in this behalf by the Provincial Government.

Powers of the Regional Forest-officer and control of the Provincial Government.

430 The West Bengal Private Forests Act, 1945.

[West Ben. Act XIV of 1945.]

(Chapter VII.—Miscellaneous.—Sections 63, 64.)

**Repeal
and
savings.**

63. (1) Sections 35, 36, 37 and 38 of the Indian Forest Act, 1927, in their application to West Bengal are hereby repealed. **XVI of 1927.**

(2) Such repeal shall not affect anything done or suffered or any obligation or liability accrued or any penalty incurred or any proceedings commenced before the commencement of this Act.

(3) Any private forest or waste-land held under the control of a Forest-officer under section 36 of the Indian Forest Act, 1927, immediately before the commencement of this Act shall, on such commencement, notwithstanding the repeal of the said section, continue to be so held under the control of a Regional Forest-officer under the provisions of this Act applicable to a vested forest and shall be deemed to be a vested forest for the purposes of this Act.

(4) All lands which immediately before the commencement of this Act were being managed as a reserved or a protected forest under the provisions of section 38 of the Indian Forest Act, 1927; shall, on such commencement, notwithstanding the repeal of the said section, continue to be managed under the provisions of section 59 of this Act as a vested forest subject to such terms as may have been mutually agreed upon between the owner or owners of such lands and the Collector, and the application made under sub-section (1) of the said section 38 by the owner or owners of any such land shall be deemed to be an application made under the said section 59.

**Repeal of
Ben. Act
XI of 1945.**

64. The Bengal Private Forests Act, 1945, is hereby repealed. **Ben. Act XI of 1945.**

West Bengal Act XVII of 1948¹

THE WEST BENGAL ELECTRICITY (EMERGENCY POWERS) ACT, 1948.

[6th May, 1948.]

Page 429—

In the Long title and Preamble, for the word "Province" substitute the word "State".

Page 429—

Eleventh

In sub-section (4) of section 1, for the words "five years" substitute the words "seven years".

(Substituted by West Ben. Act XIV of 1953, section 2.)

[No. 50, dated the 26th May, 1953.]

tricity (Emergency Powers) Act, 1948.

extent,
commence-
ment and
duration.

(2) It extends to the whole of the Province of West Bengal.

Page 429—

In sub-section (4) of section 1, for the words "three years" substitute the words "five years".

(Substituted by West Bengal Act XV of 1951, section 2.)

[No. 48, dated the 1st April, 1952.]

2. In this Act, unless there is anything repugnant in the subject or context,—

Defini-
tions.

(a) "area of supply", "consumer", "licensee", "street" and "works" have the meanings assigned to them in section 2 of the Indian Electricity Act, 1910; and

IX of 1910.

(b) "requisition" means a requisition made under the schedule to the Indian Electricity Act, 1910, for the supply of electrical energy.

3. Notwithstanding anything contained in any contract or agreement, the Provincial Government may, by an order in writing, require any consumer to, and thereupon such consumer shall, reduce his consumption of electrical energy to such extent and in such manner and by such means as may be specified in the order. The Provincial Government shall serve a copy of the order on the licensee supplying the energy.

Restric-
tion on
consump-
tion of
supply.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 28th November, 1947, Part IV, page 373; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 23rd March, 1948.

²The Act was brought into force on the 1st June, 1948, vide notification No. 2047-Com., dated the 22nd May, 1948, published at page 696 of the *Calcutta Gazette* of the 27th May, 1948.

(Sections 4, 5.)

Discontin-
nuance or
reduction
of supply
in certain
circum-
stances.

4. (1) Notwithstanding anything contained in the Indian Electricity Act, 1910, or any license granted thereunder or any agreement for the supply of electrical energy, the Provincial Government may, if in its opinion it is necessary or expedient for maintaining the supply or securing the equitable distribution of electrical energy, by an order in writing—

- (i) authorise, or
- (ii) require,

a licensee to, and the licensee when so required shall, discontinue or reduce the supply of electrical energy to any consumer not being a distributing licensee, if such consumer—

- (a) without the permission of the Provincial Government contravenes any order issued to him under section 3, or
- (b) without the permission of the Provincial Government—
 - (i) exceeds at any time the maximum demand in K.W. of electrical energy recorded in respect of him during the twelve months ending on the 31st January, 1945, or
 - (ii) connects or has connected load beyond that notified in writing to the licensee up to the 31st January, 1945.

(2) The licensee shall—

- (i) before discontinuing or reducing the supply of electrical energy under sub-section (1) give the consumer not less than forty-eight hours' notice in writing of his intention so to do;
- (ii) on discontinuing the supply, communicate to the Provincial Government within twenty-four hours from the date of discontinuance the circumstances in which he has done so;
- (iii) on being so directed in writing by the Provincial Government recommence the supply with all possible speed.

(3) The licensee shall report to the Provincial Government within twenty-four hours of its coming to his notice every contravention of any direction given under section 3 or clause (b) of sub-section (1).

Restriction on
supply of
electrical
energy and
prohibition
on recon-
nection of
supply.

5. (1) Notwithstanding anything contained in the Indian Electricity Act, 1910, or in any license granted there- IX of 1910
under or in any contract or agreement or in any requisition, the Provincial Government may, if in its opinion, it is necessary or expedient for maintaining the supply or securing the equitable distribution of electrical energy, by an order in writing direct a licensee—

- (a) not to comply, except with the written permission of the Provincial Government, with—
 - (i) the provisions of any contract, agreement or requisition (whether made before or after the

XVII of 1948.]

(Sections 6—9:)

commencement of this Act), for the supply (other than the resumption of a supply), or an increase in the supply, of electrical energy to any person,

(ii) any requisition for the resumption of a supply to a consumer after a period of six months from the date of its discontinuance,

(iii) any requisition for the resumption of a supply made within six months of its discontinuance, where the requisitioning consumer was not himself the consumer of the supply at the time of its discontinuance;

(b) not to comply with any requisition for municipal purposes involving (otherwise than by way of replacement) any new works or additions to or alterations of works already installed.

(2) To obtain any permission required under sub-section (1), the licensee shall make an application to the Provincial Government in such form as the Provincial Government may notify in the *Official Gazette* in this behalf.

(3) On an application being made under sub-section (2), the Provincial Government may either refuse the permission sought or grant it either absolutely or subject to such conditions as it may think fit to impose and may also call for such further particulars relating to the application as it may require.

6. Notwithstanding anything contained in any contract or agreement, the Provincial Government may, if it so thinks fit, by notification in the *Official Gazette*, direct any person receiving a supply of electrical energy from a licensee specified in the notification that he shall not use or cause to be used such electrical energy in the area of supply of such licensee for exhibiting light intended for advertisement on the exterior of any premises or on any plot of land or in any street or open space.

Restriction on the use of electrical energy for the purpose of advertisement.

7. Any person who contravenes any order made under section 3, 4, 5 or 6 shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Penalties.

8. If the person referred to in section 7 is a company or other body corporate, the managing director, manager, secretary, or other principal officer managing its business shall be deemed to be guilty of such contravention.

Offences by corporations.

9. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by such public servant as may be authorised by the Provincial Government in this behalf.

Cognizance of offences.

[West Ben. Act XVII of 1948.]

(Sections 10—12.)

Bar to
legal pro-
ceedings.

10. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order, direction or requirement made under section 3, 4, 5 or 6.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3, 4, 5 or 6.

Service of
order or
directions.

11. Every order or direction made or issued under this Act shall, as far as may be, be served in the manner prescribed in section 53 of the Indian Electricity Act, 1910.

IX of 1910

Effect of
expiration
of this Act.

12. On the expiration of this Act, such expiration shall not—

(a) affect any penalty or punishment incurred in respect of any offence committed under this Act before its expiration; or

(b) affect any investigation, legal proceeding or remedy in respect of any such penalty or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if this Act had not expired.

West Bengal Act XXI of 1948¹

THE WEST BENGAL LAND DEVELOPMENT AND PLANNING ACT, 1948.

[7th October, 1948.]

*An Act to provide for the acquisition and development of land
for public purposes.*

WHEREAS it is expedient to provide for the acquisition and
Page 433—

To sub-section (2) of section 1, add the following *Explan-*
ation, namely:—

“Explanation.—For the purpose of this Act, the ^{Ben. Act} Calcutta Improvement Act, 1911, shall not be ^{V of 1911.} deemed to have been extended under sub-section (3) of section 1 of that Act to any area if section 167 only of that Act has been extended to such area.”

Ben. Act.
V of 1911.

and put an asterisk before the said *Explanation* and insert the following footnote, namely:—

West Ben.
Ord. II of
1948.

*This amendment was made with retrospective effect by the West Bengal Act XXIX of 1951, section 2.”

(Added by West Ben. Act XXIX of 1951, section 2.)

[No. 48, dated the 1st April, 1952.]

I of 1894.

- pany” respectively have the same meanings as in the Land Acquisition Act, 1894;
- (b) “development scheme” means a scheme for the development of land for any public purpose;
 - (c) “notified area” means an area declared under sub-section (1) of section 4 to be a notified area;
 - (d) “public purpose” includes—
 - (i) the settlement of immigrants who have migrated into the Province of West Bengal on account of circumstances beyond their control,
 - (ii) the establishment of towns, model villages and agricultural colonies,
 - (iii) the creation of better living conditions in urban and rural areas, and
 - (iv) the improvement and development of agriculture, forestry, fisheries and industries;
 - (e) “rules” means rules made under this Act.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 23rd March, 1948, Part IV, page 343; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meetings of the West Bengal Legislative Assembly held on the 30th March and the 18th and the 20th September, 1948.

(Sections 3—5.)

Appoint-
ment of the
prescribed
authority.

3. The Provincial Government may appoint, in accordance with the rules, an authority (hereinafter referred to as the prescribed authority) for carrying out the purposes of this Act.

Declara-
tion of
notified
area.

4. (1) The Provincial Government may, by notification in the *Official Gazette*, declare any area specified in the notification to be a notified area if it is satisfied that any land in such area is needed or is likely to be needed for any public purpose and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality in such manner as he may think fit.

(2) Thereupon it shall be lawful for any person either generally or specially authorised by such Government in this behalf and for his servants and workmen,—

to enter upon and survey and take levels of any land in such area;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is suitable for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that the person so authorised shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

Prepara-
tion and
sanction-
ing of deve-
lopment
scheme.

5. (1) The Provincial Government may direct the prescribed authority, or, if it so thinks fit in any case, authorise any Company or local authority, to prepare, in accordance with the rules, a development scheme in respect of any notified area and thereupon such scheme shall be prepared accordingly and submitted, together with such particulars as may be prescribed by the rules, to the Provincial Government for its sanction.

(2) A development scheme submitted to the Provincial Government under sub-section (1) may be sanctioned by it either without any modification or subject to such modifications as it may deem fit.

The West Bengal Land Development and Planning Act, 1948.

XXI of 1948.]

(Sections 6—8.)

6. (1) When a development scheme is sanctioned under sub-section (2) of section 5 and the Provincial Government is satisfied that any land in the notified area for which such scheme has been sanctioned is needed for the purpose of executing such scheme, a declaration to the effect that such land is needed for a public purpose shall, unless already made in pursuance of section 7, be made by the Provincial Government.

Declaration for acquisition of land needed for development scheme.

(2) The declaration shall be published in the *Official Gazette*, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

7. In cases of urgency, if in respect of any notified area the Provincial Government is satisfied that the preparation of a development scheme is likely to be delayed, the Provincial Government may, at any time, make a declaration under section 6, in respect of such notified area or any part thereof though no development scheme has either been prepared or sanctioned under section 5.

Special provision in cases of urgency.

8. A declaration under section 6 shall be conclusive evidence that the land in respect of which the declaration is made is needed for a public purpose and, after making such declaration, the Provincial Government may acquire the land and thereupon the provisions of the Land Acquisition Act, 1894 (hereinafter in this section referred to as the said Act), shall, so far as may be, apply:

Application of Act I of 1894 subject to special provision for compensation.

I of 1894.

Provided that—

(a) if in any case the Provincial Government so directs, the Collector may, at any time after a declaration is made under section 6, take possession, in accordance with the rules, of any *beel*, *baor*, tank or other watery area, or any other waste or arable land in respect of which the declaration is made and thereupon such land shall vest absolutely in the Crown free from all encumbrances;

Explanation.—For the purposes of this clause the decision of the Provincial Government as to whether any land is or is not waste or arable land shall be final;

(b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause *first* of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of the land on the date of publication of the notification

(Sections 9—11.)

under sub-section (1) of section 4 for the notified area in which the land is included subject to the following condition, that is to say,—

if such market value exceeds by any amount the market value of the land on the 31st day of December, 1948, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration.

Power to dispose of land without development.

9. Notwithstanding anything elsewhere contained in this Act or in any rule or order made thereunder, the Provincial Government may, if it so considers expedient, retain, let on hire, lease, sell, exchange or otherwise dispose of any land acquired in pursuance of this Act:

Provided that—

(a) where the Provincial Government decides to lease or sell any land acquired in pursuance of this Act, the person or persons from whom the land was so acquired shall, in such manner as the Provincial Government may direct, be offered a prior right to take on lease or to purchase the land on such terms and conditions as may be determined by the Provincial Government;

(b) if, in any case, two or more persons claim to exercise a right offered under clause (a), the right shall be exercisable by such of the claimants as the Provincial Government may determine.

Execution of development scheme and disposal of land.

10. (1) The Provincial Government may direct the prescribed authority to execute any development scheme sanctioned under sub-section (2) of section 5 or cause it to be executed in accordance with the rules and upon the execution of the scheme as so directed the lands comprised therein shall be disposed of by the Collector in such manner as may be directed by the Provincial Government.

(2) If the Provincial Government so thinks fit, it may also empower a Company or a local authority to execute, at its own cost, any such development scheme and to dispose of the lands comprised therein on such terms and conditions including conditions relating to the manner of disposal of land as may be settled by the Provincial Government and embodied in an agreement to be entered into by the Provincial Government and the Company or local authority, as the case may be.

Withdrawal of power from Company or local authority to execute development scheme or to dispose of land.

11. If, at any time, the Provincial Government is satisfied that any of the terms or conditions contained in an agreement referred to in sub-section (2) of section 10 is not being complied with, it may, by order served in accordance with the rules on the Company or local authority, as the case may be, withdraw the power conferred on it to execute any development scheme or to dispose of the lands comprised therein or both and may thereafter make such arrangement in that behalf as it may deem fit and proper.

**The West Bengal Land Development and Planning 437
Act, 1948.**

XXI of 1948.]

(Sections 12—15.)

12. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection
of action
taken
under this
Act.

13. The Provincial Government may, by notification in the *Official Gazette*, direct that any or all of the powers conferred upon it by this Act shall be exercisable also by such authority subject to such conditions, if any, as may be specified in the notification.

Delega-
tion of
powers.

14. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

Power to
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the designation, constitution and manner of appointment of the prescribed authority;
- (b) the preparation of development schemes and the particulars to be submitted with development schemes referred to in sub-section (1) of section 5;
- (c) the manner of taking possession of land referred to in clause (a) of the proviso to section 8;
- (d) the execution of development schemes referred to in section 10;
- (e) the manner of service of orders referred to in section 11.

15. Any appointment or rules made or any notification issued or anything done or any action taken or any proceeding commenced in exercise of any power conferred by or under the West Bengal Land Development and Planning Ordinance, 1948, shall, on the said Ordinance ceasing to operate, be deemed to have been made, issued, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 27th day of April, 1948.

Continu-
ance of
action
taken
under West
Bengal Or-
dinance II
of 1948.

West Ben.
Ord. II of
1948.

West Bengal Act XXIII of 1948¹

THE 24-PARGANAS DISTRICT BOARD DISSOLUTION (TEMPORARY PROVISIONS) ACT, 1948.

[9th October, 1948.]

An Act to provide for the dissolution and constitution of the District Board of the 24-Parganas.

WHEREAS it is expedient to provide for the dissolution and constitution of the District Board of the 24-Parganas in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the 24-Parganas District Board Dissolution Act, 1948. Short title
Page 439—

West Ben. Ord. III of 1948. In sub-section (3) of section 1, for the words and figures "9th day of May, 1950", substitute the words and figures "15th day of December, 1950".

(Substituted by West Ben. Act XIV of 1950, section 2.)
[No. 45, dated the 2nd December, 1950.]

— IN THIS ACT, unless there is anything repugnant in the subject or context,— Definitions.

Ben. Act III of 1885.

(a) "the Act" means the Bengal Local Self-Government Act of 1885; and

(b) "the District Board" means the District Board of the 24-Parganas.

3. The Provincial Government may, if and so often as it so thinks fit, by an order published in the *Official Gazette* dissolve the District Board from such date as may be specified in the order: Dissolution of the District Board.

Provided that such powers shall not be exercised when the District Board is reconstituted on the result of the election referred to in sub-section (1) of section 7 in accordance with the provisions of the Act.

4. Notwithstanding anything contained in the Act, all the members constituting the District Board and the Chairman and the Vice-Chairmen of the District Board shall, as from the date of dissolution, vacate their offices as such members, Chairman and Vice-Chairmen. Consequences of dissolution.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 23rd August, 1948, Part IV, page 723; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 21st September, 1948.

(Sections 5—9.)

Constitu-
tion of the
District
Board.

5. Notwithstanding anything contained in the Act, the Provincial Government shall, if the District Board is dissolved, by notification in the *Official Gazette*, constitute the District Board as from the date of dissolution in such manner and consisting of such number of members as it may determine in this behalf.

Term of
office of
members.

6. The Provincial Government shall, by notification in the *Official Gazette*, fix the term of office of members of the District Board constituted under section 5:

Provided that the term of office so fixed shall not exceed the period during which this Act remains in force.

Reconsti-
tution of
the District
Board in
accord-
ance with
the provi-
sions of the
Bengal
Local Self-
Govern-
ment Act
of 1885.

7. (1) Before the expiry of the term of office of the members of the District Board constituted under section 5, there shall be a fresh general election of members of the District Board in conformity with the provisions of the Act and the rules made thereunder and the persons who vacated their offices under section 4 shall not be deemed disqualified for such election if they are otherwise qualified therefor.

(2) On the expiration of the term of office of the members of the District Board constituted under section 5, the District Board shall be reconstituted on the result of election referred to in sub-section (1) in accordance with the provisions of the Act.

Casual
vacancies.

8. When the place of a member of the District Board constituted under section 5 becomes vacant, the Provincial Government shall, as soon as may be, appoint another person to fill the vacancy and the person so appointed shall hold office for the residue of the term of office of the member in whose stead he is appointed.

Continu-
ance of
action
taken
under West
Bengal
Ordinance
III of 1948.

9. Any notification issued or anything done or any action taken in exercise of any power conferred by the 24-Parganas District Board (Dissolution) Ordinance, 1948, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act, as if this Act had commenced on the 3rd day of May, 1948.

West
Ben. Ord.
III of
1948.

West Bengal Act XXV of 1948¹

THE WEST BENGAL RAW JUTE FUTURES ACT, 1948.

[8th October, 1948.]

An Act to provide for the prevention of dealing in raw jute futures.

WHEREAS it is expedient to provide for the prevention of dealing in raw jute futures;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Raw Jute Futures Act, 1948.

Short title, extent and commencement.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Bengal Raw Jute Futures Ordinance, 1948, ceases to operate.

West Ben.
Ord. X of
1948.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "contract relating to raw jute futures" means a contract relating to the sale or purchase of a screwed bale of raw jute made on a forward basis—

(a) providing for the payment or receipt, as the case may be, of margin in such manner and on such dates as may be specified in the contract, or

(b) by or with any person not being a person who—

(i) habitually deals in the sale or purchase of raw jute involving the actual delivery of possession thereof, or

(ii) possesses, or has control over, a godown and other means and equipments necessary for the storage and supply of raw jute;

(2) "margin" means the difference between the rate specified in a contract relating to the sale or purchase of a screwed bale of raw jute made on a forward basis and the rate prevailing on such date subsequent to the date of the contract as may be specified in the contract.

3. (1) The Provincial Government may, from time to time, if it so thinks fit, by notification in the *Official Gazette*, prohibit the making of contracts relating to raw jute futures and may, by like notification, withdraw such prohibition:

Power of Provincial Government to prohibit contracts relating to raw jute futures.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 7th September, 1948, Part IV, page 761; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 21st September, 1948.

(Section 4.)

Provided that the withdrawal of any such prohibition shall not affect the operation of the provisions of sub-section (2) in respect of any contract relating to raw jute futures made prior to the date on which the prohibition is withdrawn.

(2) When the making of contracts relating to raw jute futures is prohibited by a notification under sub-section (1),—

- (a) no person shall make any such contract or pay or receive any margin except, in the case of any such contract made prior to the date of the notification, to the extent to which the payment or receipt, as the case may be, of margin is allowable on the basis of the last closing rate in a notified market;
- (b) no owner or occupier of any premises shall knowingly permit such premises to be used for the making of any such contract or for the payment or receipt of margin in contravention of the provisions of clause (a); and
- (c) notwithstanding anything contained in any other law for the time being in force,—
 - (i) every such contract made, and every claim in respect of margin, in contravention of the provisions of clause (a), shall be void and unenforceable, and
 - (ii) every such contract made prior to the date of publication of the notification shall be varied and settled on the basis of the last closing rate in a notified market.

Explanation.—In this sub-section,—

- (a) “last closing rate” means the rate fixed by the Directors of a notified market to be the closing rate of such market immediately preceding the date of publication of the notification under sub-section (1) prohibiting the making of contracts relating to raw jute futures; and
- (b) “notified market” means a raw jute futures market recognised by the Provincial Government by notification in the *Official Gazette*.

Penalty.

4. Whoever, in contravention of the provisions of section 3,—

- (a) makes a contract relating to raw jute futures, or pays or receives, as the case may be, margin, or
- (b) being the owner or occupier of any premises, knowingly permits such premises to be used for the making of a contract relating to raw jute futures, or for the payment or receipt of margin,

shall, on conviction, be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

XXV of 1948.]

(Sections 5, 6.)

Act V of 1898. 5. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under this Act shall be cognisable and non-bailable and shall not be triable by any Magistrate other than a Presidency Magistrate or Magistrate of the First Class. **Special procedure.**

West Ben. Ord. X of 1948. 6. Any notification issued or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the West Bengal Raw Jute Futures Ordinance, 1948, shall, on the said Ordinance ceasing to operate, be deemed to have been issued, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 24th day of August, 1948. **Continuance of action taken under West Bengal Ordinance X of 1948.**

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West Bengal Act XXVI of 1948¹

THE WEST BENGAL CEMENT CONTROL ACT, 1948.

[8th October, 1948.]

An Act to confer powers to control the production, supply and distribution of, and trade and commerce in, cement in West Bengal.

WHEREAS it is expedient to confer powers to control the production, supply and distribution of, and trade and commerce in, cement in West Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Cement Control Act, 1948.

Short title, extent and commencement.

(2) It extends to the whole of West Bengal.

West Ben.
Ord. IX of
1948.

(3) It shall come into force on the date on which the West Bengal Cement Control Ordinance, 1948, ceases to operate.

2. In this Act, unless there is anything repugnant in the subject or context, "cement" includes portland cement, any other cementitious product manufactured by intergrinding or intermixing portland cement as defined in the British Standard Specifications of 1940, with any active or inert material, white and coloured cements, high alumina cements, and any product manufactured by direct mixing of some or all oxides constituting normal portland cement.

Definition.

3. (1) The Provincial Government, so far as it appears to it to be necessary or expedient for maintaining or increasing the supply of cement or for securing its equitable distribution and availability at fair prices, may, by order in the *Official Gazette*, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein within West Bengal.

Power to control production, supply, distribution, etc., of cement.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

- (a) for regulating by licences, permits or otherwise the production or manufacture of cement;
- (b) for regulating or controlling the prices at which cement may be purchased or sold and for prescribing the conditions of sale thereof;
- (c) for regulating by licences, permits or otherwise, the storage, transport, movement, possession, distribution, disposal, acquisition, use or consumption of cement;

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 31st August, 1948, Part IV; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 21st September, 1948.

(Sections 4, 5.)

- (d) for prohibiting the withholding from sale of cement ordinarily kept for sale;
- (e) for requiring any person holding stock of cement to sell the whole or specified part of the stock at such prices and to such persons or classes of persons or in such circumstances, as may be specified in the order;
- (f) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (g) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, cement to maintain and produce for inspection such books, account and records relating to their business and to furnish such information relating thereto, as may be specified in the order; and
- (h) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of cement in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licenses, permits or other documents, and the charging of fees therefor.

(3) When any cement is seized under the authority of any order made under sub-section (1), the person seizing the cement shall make a report of such seizure to a Magistrate who may give such directions as to its temporary custody as he thinks fit, so, however, that where no prosecution is instituted for contravention of the order in respect of the cement seized within a period in his opinion reasonable, the Magistrate shall direct its return to the person from whom it was seized; and the provisions of the Code of Criminal Procedure, 1898, shall, so far as they may be applicable, apply to any search or seizure under any such order as they apply to any search or seizure under Chapter VII of that Code.

Act V of 1898.

Page 446—

In section 4, for the words "or authority subordinate to the State Government" substitute the words "not below the rank of Subdivisional Controller of Food and Supplies."

(Substituted by West Ben. Act XXI of 1956, section 2.)

[No. 59, dated the 1st April, 1957.]

consistent
with other
enact-
ments.

withstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

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(Sections 6—12.)

4. If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and, if the order so provides, any Court, trying such contravention, may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty. Penalties.

7. Any person who attempts to contravene, or abets a contravention of, any order made under section 3, shall be deemed to have contravened that order. Attempts and abetments.

8. If the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention. Offences by corporation.

9. If any person—

(i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

False statement.

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

10. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.

Cognizance of offences.

Act XLV of 1960.

Each of Magistrates empowered

Power to try offences summarily.

Page 447—

Omit section 11.

(Omitted by West Ben. Act XXI of 1956, section 3.)

[No. 59, dated the 1st April, 1957.]

n. 32

Special provision regarding fines.

of the Code of Criminal Procedure, 1909, it shall be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

248 The West Bengal Cement Control Act, 1948.
[West Ben. Act XXVI of 1948.]

(Sections 13—16.)

in section 13, for the words 'No order', substitute the word conferred by any Court.
 Save as provided in the Constitution of India, no

proceeding substituted by West Ben. Act XXI of 1956, section 4.) in good faith order made
 [No. 59, dated the 1st April, 1957.]

(2) No suit or other legal proceeding shall lie against the Crown for any damages caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

Power to exempt certain varieties of cement.

15. The Provincial Government may, by notification in the *Official Gazette*, exempt any variety of cement from all or any of the provisions of this Act.

Continuance of action taken under West Ben. Ord. IX of 1948.

16. Any order or direction issued or any action taken or anything done or any penalty, forfeiture or punishment incurred or imposed or any proceeding commenced in exercise of any power conferred by the West Bengal Cement Control Ordinance, 1948, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, taken, done, incurred, imposed or commenced under the provisions of this Act as if this Act had commenced on the 6th day of August, 1948.

West Ben. Ord. IX of 1948.

West Bengal Act XXIX of 1948¹

THE WEST BENGAL UNDESIRABLE ADVERTISEMENTS (CONTROL) ACT, 1948.

[15th October, 1948.]

An Act to control the publication of advertisements relating to contraceptives and the medical treatment of certain diseases and disorders.

WHEREAS it is expedient to control the publication of advertisements relating to contraceptives and the medical treatment of certain diseases and disorders;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Undesirable Advertisements (Control) Act, 1948.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "advertisement" includes oral advertisement and also includes any notice, sign, announcement, bill, hand-bill, circular, book, newspaper, magazine, periodical, pamphlet or leaflet, whether pictorial or otherwise;

(2) "prescribed" means prescribed by rules made under this Act;

(3) "sexual disorder" means any ailment, irregularity, affection or diseased condition of the organs of generation;

(4) "venereal disease" means syphilis, gonorrhoea or soft chancre or any sign, symptom or *sequela* of such disease and includes such other venereal diseases as may be prescribed by the Provincial Government in this behalf.

3. (1) No person shall by means of any advertisement,—

Prohibition
of issue of
certain ad-
vertise-
ments.

(a) prescribe or offer to prescribe any medicine or appliance for use as contraceptive, or

(b) offer to treat any person for, or indicate the line of treatment of, any venereal disease, sexual disorder, irregularity of menstruation or any other

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extra-ordinary*, dated the 18th March, 1948, Part IV, page 297; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th September, 1948.

(Sections 4, 5.)

prescribed disease, infirmity or abnormality or offer to prescribe, any remedy therefor, or give or offer to give any advice in connection with the treatment thereof.

(2) No person shall print or publish, or cause to be printed or published, for distribution or exhibition to the public, or circulate or cause to be circulated or exhibit or cause to be exhibited, to the public or to any person,—

- (a) any advertisement referred to in sub-section (1), or
- (b) any label or set of instructions, whether pictorial or otherwise, to be affixed to or delivered with, any packet, box, bottle or phial,

if such label or set of instructions recommends, asserts or infers that any remedy, medicine, medicinal or herbal preparation or any appliance or charm of any kind, whether for use internally or externally, is a contraceptive or is useful or may be used as a contraceptive, or is a cure, or is useful or may be used, for the prevention, treatment or relief of any venereal disease, sexual disorder, irregularity of menstruation or any other prescribed disease, infirmity or abnormality.

Confiscation of documents, etc., containing advertisement, etc., which contravenes section 3.

4. (1) Any person prescribed under sub-section (2) who may be authorised in writing in this behalf by the Commissioner of Police in Calcutta and the District Magistrate elsewhere may at any time seize and detain any document or any article or thing which such person has reason to believe contains any advertisement which contravenes any of the provisions of section 3, and the Court trying such contravention may direct that such document or such article or thing and all copies thereof shall be forfeited to His Majesty.

(2) The Provincial Government shall prescribe the persons or classes of persons who may be authorised under sub-section (1) to take the action provided for under that sub-section.

(3) Where in pursuance of sub-section (1) any document or article or thing has been declared to be forfeited to His Majesty, any police officer may seize any copy thereof, wherever found, and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search any premises whereon or wherein such document or article or thing or any copy thereof is or is reasonably suspected to be.

Explanation.—In this section “Calcutta” means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866.

*Ben. Act.
IV of 18 66
Ben. Act.
II of 1866.*

Penalty.

5. Whoever contravenes any of the provisions of section 3 shall, on conviction, be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

XXIX of 1948.]

(Sections 6—10.)

6. Nothing in this Act shall apply to,—

Act not to
apply in
certain
cases.

(a) any medical treatise or book, or any treatise or book dealing with the subject from a *bona fide* scientific or social standpoint, or

(b) any advertisement, or any article or thing sent confidentially in the prescribed manner only to a medical practitioner or to a wholesale or retail chemist for the purpose of his business, or

(c) any advertisement made, printed or published with the previous sanction of such person or persons as the Provincial Government may appoint in this behalf, or

(d) any advertisement, label or set of instructions which is permitted under the Drugs Act, 1940, or any rules made thereunder.

XXIII of
1940.

Explanation.—“Medical practitioner” in this section includes a person regularly practising either the allopathic, homœopathic, Ayurvedic, Unani or any other system of medicine.

7. No Magistrate other than a Presidency Magistrate or a Magistrate of the First Class shall try an offence punishable under this Act.

Jurisdic-
tion to try
offences.

8. Any person empowered to act under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Officers to
be deemed
public
servants.

Act XLV
of 1890.

9. No suit, prosecution or other legal proceeding shall lie against any servant of the Crown for anything which is in good faith done or intended to be done under this Act.

Indemnity.

10. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

Power to
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the venereal diseases referred to in clause (4) of section 2;

(b) the diseases, infirmities or abnormalities referred to in section 3;

(c) the persons and classes of persons referred to in sub-section (2) of section 4;

(d) the manner of sending confidentially an advertisement, article or thing referred to in clause (b) of section 6.

West Bengal Act XXX of 1948¹

THE CALCUTTA SHERIFF'S ACT, 1948.

[15th October, 1948.]

An Act to provide for certain matters relating to the office of the Sheriff of Calcutta.

WHEREAS it is expedient to provide for certain matters relating to the office of the Sheriff of Calcutta;

It is hereby enacted as follows:—

1. (1) This Act may be called the Calcutta Sheriff's Act, 1948. Short title and commencement.

(2) It shall come into force on such date^a as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context, "prescribed" means prescribed by rules made under this Act. Definition.

*Page 453—

In sub-section (2) of section 3, for the word "allowances" wherever it occurs substitute the word "remuneration". Appointment of the Sheriff of Calcutta.

(Substituted by West Ben. Act XXIII of 1950, section 2.)

[No. 45, dated the 2nd December, 1950.]

*Page 453—

In section 4, for the word "allowances", substitute the word "remuneration". Appointment of the Deputy Sheriff of Calcutta.

(Substituted by West Ben. Act XXIII of 1950, section 3.)

[No. 45, dated the 2nd December, 1950.]

5. Subject to the provisions of this Act, the Sheriff and the Deputy Sheriff and their subordinates shall carry out the orders of the High Court in Calcutta in the manner determined by the said Court. Power of the High Court to control certain functions of the Sheriff and other employees.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 20th August, 1948, Part IV, page 687; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th September, 1948.

²The Act was brought into force on the 20th December, 1948, vide notification No. 5968, dated the 14th December, 1948, published at page 1652 of the *Calcutta Gazette* of the 16th December, 1948.

Page 454—

In section 6, for the words "the Crown in India" substitute the words "the Government".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]—

~~Liability~~

ordinates shall be exempt from liability in respect of all their acts or defaults done or committed while exercising or purporting to exercise their functions under this Act or for which they would have been liable but for this Act.

Liability
of the Pro-
vincial re-
venues in
certain
cases.

8. (1) The revenues of the Province shall be liable to make good all sums required to discharge the liability mentioned in section 7.

(2) Nothing in sub-section (1) shall be deemed to render liable the revenues of the Province or any Sheriff, or Deputy Sheriff or any of their subordinates appointed after the commencement of this Act for anything done by, or under the authority of, any Sheriff or Deputy Sheriff before the commencement of this Act.

***Page 454—**

In section 8, for sub-section (1), substitute the following sub-section, namely:—

“(1) The Consolidated Fund of the State shall be liable to make good all sums required to discharge any liability from which the Sheriff, the Deputy Sheriff or their subordinates are exempted under the provisions of section 7”.

(Substituted by West Ben. Act XXIII of 1950, section 4.)

[No. 45, dated the 2nd December, 1950.]

***Page 454—**

In section 9, for the word “fees” wherever it occurs substitute the words “fees, poundage and charges”.

(Substituted by West Ben. Act XXIII of 1950, section 5.)

[No. 45, dated the 2nd December, 1950.]

***Page 454—**

In section 10, omit the words “prior to the commencement of this Act” and the words “at the date of the commencement of this Act”.

(Omitted by West Ben. Act XXIII of 1950, section 6.)

[No. 45, dated the 2nd December, 1950.]

*These amendments came into force with retrospective effect.

pensions or gratuities out of the revenues of the Province.

XXX of 1948.]

(Section 11.)

(2) All officers and servants of the Sheriff, who are in his employment at the date of the commencement of this Act, shall, in respect of such employment prior to that date, be paid out of the revenues of the Province such pensions, gratuities and compensation as may be determined by the Provincial Government in accordance with the rules of the Fund:

Provided that such compensation, if any, shall not be less than that which, in similar circumstances and in accordance with the rules made in this behalf by the Provincial Government, would be admissible to persons in the service of the Provincial Government.

(3) Any dispute arising in connection with the amount of any pension, gratuity or compensation payable under sub-section (1) or sub-section (2) shall be referred to the West Bengal Public Service Commission, the decision of which shall be final and shall not be the subject-matter of any proceedings in any Court.

(4) All pensions payable under this section out of the revenues of the Province shall be so payable in all respects as pensions payable for service under the Provincial Government and shall be subject to the rules made in that behalf by the Provincial Government.

(5) If any officer or servant of the Sheriff is permanently re-employed in the service of the Provincial Government, his employment under the Sheriff shall, for the purposes of the rules relating to pay and pensions, be deemed to have been service under the Provincial Government:

Provided that,—

(a) if any such officer or servant desires to elect to refund any gratuity or cease to draw any pension, as the case may be, and to count for future pension his employment under the Sheriff, he shall so elect immediately on being permanently re-employed; and

(b) if he so elects, any period of temporary service under the Provincial Government intervening between the date of the commencement of this Act and the date of such permanent re-employment shall not be considered as a break in service, but shall not count as service for the purposes of pension.

Explanation.—Where such election is made, the whole of the pension, both for employment under the Sheriff prior to the commencement of this Act and for service in such permanent re-employment under the Provincial Government, shall be calculated at the rates provided in the rules relating to the pensions of servants of the Provincial Government, and not at the rates provided in the rules of the Fund.

[West Ben. Act XXX of 1948.]

(Section 12.)

Power to make rules. 12. (1) The Provincial Government may make rules for carrying into effect the purposes of this Act in regard to those functions of the Sheriff which are discharged under the administrative control of the Provincial Government.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—

*Page 456—

and the allowances of
In sub-section (2) of section 12,—

(1) in clause (a), for the word "allowances", substitute the word "remuneration"; and

(2) in clause (c), after the word "fees", insert the words "and he ns", poundage and charges."

*These amendments came into force with retrospective effect.

(Substituted and inserted by West Ben. Act XXIII of 1950, section 7.)

[No. 45, dated the 2nd December, 1950.]

(e) the accounts to be maintained by the Sheriff, and the audit and inspection thereof.

West Bengal Act XXXI of 1948¹

THE WEST BENGAL LAND-REVENUE, RENT AND CESS (APPORTIONMENT) ACT, 1948.

[15th October, 1948.]

An Act to apportion and fix the land-revenues, rents and cesses in respect of the portions situated within West Bengal of certain estates, Putni and other tenures and holdings.

WHEREAS certain estates, tenures and holdings in the Province of Bengal as it existed before the date on which the award came into force are comprised of lands situated, after the said date, partly in the Province of West Bengal in the Dominion of India and partly in the Province of East Bengal in the Dominion of Pakistan;

AND WHEREAS it is expedient to apportion and fix the land-revenues of rents, as the case may be, and the cesses payable in respect of the portions situated in West Bengal of the common estates, tenures or holdings;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Land-revenue, Rent and Cess (Apportionment) Act, 1948.

Short title,
extent and
commencement.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date² as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "award" means the award of the Boundary Commission referred to in section 3 of the Indian Independence Act, 1947.

Page 457—

In clause (2) of section 2, enclose the expression "the Province of East Bengal" within square brackets and put an asterisk before the said expression and insert the following foot-note, namely:—

"*This expression within square brackets shall stand unmodified."

(Vide Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 11th September, 1948, Part IV, page 787; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 23rd September, 1948.

²The Act was brought into force on the 23rd December, 1948, vide notification No. 9958L. Ref., dated the 18th December, 1948, published at page 1692 of the *Calcutta Gazette* of the 23rd December, 1948.

(Sections 3—7.)

(4) 'Revenue-officer' includes any officer whom the Provincial Government may appoint to discharge any of the functions of a Revenue-officer under this Act; and

(5) "tenure" includes a *Putni* tenure.

Power to
order pre-
paration of
record of
lands in
common
estate
tenures
and hold-
ings.
Prepara-
tion of
record.

3. The Provincial Government may, by notification in the *Official Gazette*, make an order directing that a record be prepared in such manner and containing such particulars as may be prescribed of all lands in West Bengal forming parts of the common estates, tenures or holdings.

4. When an order has been made for the preparation of a record under section 3, the Revenue-officer shall prepare such record accordingly containing, in addition to the particulars referred to in section 3, the amounts of land-revenues or rents, as the case may be, and of cesses payable in respect of the portions included in West Bengal of the common estates, tenures or holdings, to be determined by the Revenue-officer in such manner and in accordance with such principles as may be prescribed.

Prelimi-
nary pub-
lication of
record.

5. When a record has been prepared under section 4, the Revenue-officer shall cause a draft of it to be published in such manner and for such period as may be prescribed and shall receive, during the period of publication of the record, any objections made in regard to any entry therein or omission therefrom relating to the apportionment of land-revenues, rents or cesses.

Final dis-
posal of
objections,
and confir-
mation and
final pub-
lication of
record.

6. (1) After the expiry of the period of publication of the record under section 5, the Revenue-officer shall submit the record to the Revenue authority prescribed with a summary of the objections, if any, which he has received and his report thereon.

(2) Such authority shall finally dispose of the objections submitted to it under sub-section (1) according to such rules as the Provincial Government may make and may confirm the record with or without amendment:

Provided that no entry shall be amended or omission supplied unless notice has been given to the parties concerned for such period and in such manner as may be prescribed to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue-officer shall cause the record to be finally published in the manner prescribed and such publication shall be conclusive evidence that the record has been duly prepared under this Act.

Appeal and
saving.

7. (1) Any person who is aggrieved by any entry in, or omission from, the record finally published under section 6 in so far as such record relates to the apportionment and

XXXI of 1948.]

(Sections 8—10.)

fixation of rents or cesses in respect of tenures or holdings, may appeal to the superior Revenue authority prescribed in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, no Court shall have any jurisdiction in respect of any issue arising out of the proceedings under this Act for the apportionment and fixation of land-revenues, rents or cesses or shall annul or alter any decision of a Revenue-officer or a Revenue authority under this Act.

8. The Revenue-officer may, at any time, either of his own motion or on application, and after giving notice to the parties concerned for such period and in such manner as may be prescribed to appear and be heard in the matter, correct any clerical or arithmetical mistake in the record finally published under section 6 or any error arising therein from any accidental slip or omission and shall make such alterations therein as may be necessary to give effect to any decision on appeal under sub-section (1) of section 7.

Correction of record.

9. On the final publication of the record under section 6,—

Commencement and effect of the record.

(a) the apportionment and fixation thereunder, of land-revenues or rents, as the case may be, and of cesses in respect of the portions situated in West Bengal of the common estates, tenures or holdings shall, notwithstanding anything contained in any other law for the time being in force or in any contract, be deemed to have come into force and the common estates, tenures or holdings, as the case may be, shall be deemed to have been and to be partitioned accordingly, on and from the date on which the award came into force (hereinafter referred to as the said date), and

(b) all laws for the time being in force relating to the creation or settlement of estates, tenures or holdings or to the recovery of land-revenue, rent or cesses in respect thereof shall be deemed to have been and to be applicable *mutatis mutandis* to such partitioned estates, tenures or holdings on and from the said date.

10. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of preparing a record and the particulars to be contained therein referred to in section 3;

(b) the manner of, and the principles for, determining the amounts of land-revenues, rents and cesses referred to in section 4;

[West Ben. Act XXXI of 1948.]

(Section 10.)

- (c) the manner and period of publication of a draft record referred to in section 5;
- (d) the Revenue authority referred to in sub-section (1) of section 6, and the disposal of objections under sub-section (2) and the manner of final publication of a record under sub-section (3) of that section;
- (e) the period of, and the manner of giving, notice referred to in the proviso to sub-section (2) of section 6 and in section 8; and
- (f) the superior Revenue authority referred to in sub-section (1) of section 7, the manner of presentation of appeals to such authority and the period within which such appeals shall be presented under the said sub-section.

West Bengal Act XXXII of 1948¹

THE WEST BENGAL BLACK MARKETING ACT, 1948.

[17th October, 1948.]

An Act to make special provision for checking black marketing.

WHEREAS it is expedient to make special provision for checking black marketing;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Black Marketing Act, 1948.

Short title,
extent
and com-
mence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Ben. Ord. VI of 1948. West Bengal Black Marketing Ordinance, 1948, ceases to operate.

2. In this Act, the expression "Black Marketing" means,— Definition.

- (a) selling or purchasing for purposes of trade any goods at a greater price than the maximum price fixed, by or under any law, notification or order for the time being in force, for the sale of such goods;
- (b) otherwise than in accordance with any law, notification or order for the time being in force, selling or disposing of, or supplying articles declared to be rationed articles or otherwise rationed by or under any law, notification or order in force;
- (c) in contravention of any law, notification or order for the time being in force, supplying, distributing, selling, disposing of, or parting with the possession or custody of, or offering to supply, distribute, sell, dispose of or part with the possession or custody of, or acquiring or taking into possession goods or anything whatsoever, the supply, distribution, sale, disposal, parting with the possession or custody, acquiring or taking into possession of which is prohibited or subject to restrictions or conditions (including conditions as to price) by or under any law, notification or order for the time being in force;
- (d) storing, taking, causing, permitting or suffering delivery of goods upon any premises delivery upon which is prohibited by or under any law, notification or order for the time being in force;

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 27th November, 1947, Part IV, page 687; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meetings of the West Bengal Legislative Assembly held on the 8th and the 10th December, 1947, and the 14th and the 21st September, 1948.

(Section 3.)

- (e) otherwise than in accordance with any law, notification or order for the time being in force, producing, manufacturing, or treating any goods or thing the production, manufacture or treating of which is subject to restrictions or conditions by or under any law, notification or order for the time being in force;
- (f) otherwise than in accordance with any law, notification or order for the time being in force, moving or purporting to sell or supply or purporting to acquire or take into possession for purposes of trade any goods or any thing whatsoever vested in His Majesty by or under any law, notification or order for the time being in force;
- (g) otherwise than in accordance with any law, notification or order for the time being in force, using, or dealing with any licence, permit, ration card, ration document, or ration coupon issued under any law, notification or order for the time being in force;
- (h) in contravention of any law, notification or order for the time being in force, making or uttering any counterfeit or forged licence, permit, ration card, ration document or ration coupon or doing any other act or thing in relation to any licence, permit, ration card, ration document or ration coupon issued under any law, notification or order for the time being in force, or in relation to any counterfeit or forged licence, permit, ration card, ration document or ration coupon;
- (i) withholding from sale any article which has been prohibited from being so withheld by or under any law, notification or order for the time being in force.

Offence of
black
marketing
and
penalty.

3. (1) Whoever commits black marketing shall be punishable with imprisonment which may extend to seven years but shall not, except for reasons to be recorded in writing, be less than six months and shall also be liable to a fine.

(2) The offence of black marketing under this Act shall not be prosecuted without the sanction of the Provincial Government.

(3) In addition to any other punishment, the Court before which a person is convicted of the offence of black marketing shall order the forfeiture to His Majesty of the goods or things (if any) in respect of which the offence of black marketing was committed or an equivalent quantity of the same or like goods or things belonging to the convicted person, or of a sum of money representing their value at the time of the order of forfeiture.

XXXII of 1948.]

(Sections 4—8.)

4. (1) On the third or any subsequent occasion on which a person is found guilty of an offence of black marketing the Provincial Government may make such order, having effect during such period as the Provincial Government thinks fit, for preventing the offender carrying on or being concerned in any manner directly or indirectly with the carrying on of the business in the course of which the transaction constituting the offence of black marketing was effected, or any branch of that business or any business or branch of business of a similar character.

Prohibition of carrying on business in certain cases.

(2) If any person contravenes an order made under this section he shall be punishable with imprisonment of either description for a term which may extend to six months and shall also be liable to fine.

(3) No Court shall take cognizance of an offence under sub-section (1) unless upon a complaint made by order of or under authority from the Provincial Government.

5. (1) Where a person guilty of the offence of black marketing is a body corporate, every person who, at the time of the commission of the offence, was a director, officer or servant actively concerned in the conduct of the business of the body corporate shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge and that he used all due diligence to prevent the commission of the offence or of offences of the same character.

Vicarious liability.

(2) Where the offence of black marketing is committed by a firm, each partner, secretary or principal officer or agent thereof shall, unless the contravention took place without his knowledge and he exercised all due diligence to prevent such contravention, be deemed to be guilty.

6. Any person who attempts or abets the commission of an offence of black marketing shall be deemed to have committed the offence of black marketing:

Attempts and abetments.

Provided, however, that the purchase of any goods for a purpose other than that of trade shall not by itself amount to abetment of black marketing.

Act XLV of 1860.

7. Any public servant as defined in the Indian Penal Code who by any dereliction of duty facilitates the commission of the offence of black marketing by any person shall be deemed to have abetted the commission of the said offence within the meaning of section 6 unless he proves his innocence.

Abetment by public servants.

8. (1) Where a person is convicted of an offence punishable under this Act, the Court before which he is convicted may, in addition to any punishment provided for the offence, order him to execute a bond for a sum proportionate to his means with or without sureties to observe the

Bond by convicted person.

(Sections 9—11.)

provisions of the law, as in force in relation to which the offence was committed, for a period not exceeding three years.

(2) If any person fails to comply with an order of the Court requiring him to execute a bond, the Court may order him to be put in prison for any term not exceeding twelve months to commence at the expiration of any term of imprisonment to which he was sentenced on his conviction.

(3) If any person who has executed a bond under sub-section (1) commits a breach of the condition specified in the bond his bond shall be forfeited and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the Court concerned why such penalty should not be paid.

Security
for good
behaviour
in certain

9. Whenever a Chief Presidency Magistrate or District Magistrate or a Presidency Magistrate or Magistrate of the first class specially empowered by the Provincial Government in this behalf, has information that there is within the limits of his jurisdiction any person who within or without such limits transports foodstuff in contravention of an order made or deemed to have been made under the Essential Supplies (Temporary Powers) Act, 1946, such Magistrate if in his opinion there is such sufficient ground for proceeding may require such person to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour for such period not exceeding one year as the Magistrate thinks fit to fix and thereafter the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898, shall apply in such cases.

XXIV of
1946.

Act V
of 1898.

Any contravention of the order under the Essential Supplies (Temporary Powers) Act, 1946, committed after the execution of such bond shall be deemed to constitute a forfeiture of the bond.

Offences
under the
Act to be
cognizable
and non-
bailable.

Special
provision
regarding
bail.

10. Any offence punishable under this Act shall be cognizable and non-bailable.

11. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no person accused in a trial before or convicted and sentenced to imprisonment by a Tribunal constituted under this Act of an offence shall be released on bail or on his own bond unless—

- (a) the prosecution has been given an opportunity to oppose the application for such release, and
- (b) where the prosecution opposes the application, the Tribunal is satisfied that there are reasonable grounds for believing that he is not guilty of the offence.

XXXX of 1948.]

(Sections 12—14.)

12. (1) The Provincial Government may, from time to time by notification in the *Official Gazette*, allot cases for trial to each Special Tribunal, and may also from time to time by like notification transfer any case from one Special Tribunal to another or withdraw any case from the jurisdiction of a Special Tribunal or make such modifications in the description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary.

Cases
triable
by Special
Tribunals.

(2) The Special Tribunals shall have jurisdiction to try the cases for the time being respectively allotted to them under sub-section (1) in respect of such of the charges as may be preferred against the several accused and any such case which is at the commencement of this Act or at the time of such allotment pending before any Court or another Special Tribunal shall be deemed to be transferred to the Special Tribunal to which it is so allotted.

13. (1) The Special Tribunal constituted under this Act shall consist of three persons each of whom shall be a person who—

Constitu-
tion of
Special
Tribunals.

(a) is or has been a Judge of a High Court or a Sessions Judge or an Additional Sessions Judge; or

(b) is qualified for appointment as a Judge of a High Court:

Provided that the appointment to a Special Tribunal of any person not qualified under clause (a) shall be made in consultation with the High Court.

(2) The Provincial Government shall appoint one of the members to be the President of the Special Tribunal.

14. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial, and in trying accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates:

Procedure
and
powers of
Special
Tribunals.

Act V of
1898.

Provided that a Special Tribunal may, for reasons to be recorded in writing, refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interest of justice:

Provided further that for the purpose of sub-section (1) of section 356 of the said Code, English shall be deemed to be the language of the Court and the Tribunal may decide by which one, if any, of its members the evidence of any or all of the witnesses shall be taken down in writing, and where under the provisions of that sub-section the evidence of witnesses is taken down under the direction and superintendence of the Tribunal but not by a member thereof, the provisions of sub-section (3) of section 356 shall not apply.

(Sections 15—18.)

(2) Notwithstanding anything contained in section 13 any two members of a Special Tribunal may proceed with the trial of a case during the temporary and unavoidable absence of the third member:

Provided that all three members shall be present when after the evidence has been concluded the prosecutor or the accused or his pleader is addressing the Special Tribunal and when the judgment in the case is delivered.

(3) Save as provided in sub-section (1), the provisions of the Code of Criminal Procedure, 1898, except the provision of section 196A and of Chapter XXXIII, shall, so far as they are not inconsistent with this Act, apply to proceedings of a Special Tribunal; and for the purposes of the said provisions the Special Tribunal shall be deemed to be a Court of Session, trying cases without a jury, and a person conducting a prosecution before a Special Tribunal shall be deemed to be a Public Prosecutor. Act V of 1898.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) In the event of any difference of opinion among the members of a Special Tribunal the opinion of the majority shall prevail.

(6) A Special Tribunal may pass any sentence authorised by law.

Appeal
and
revision.

15. The High Court may, subject to the provisions of section 16 regarding the transfer of cases, exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, on a High Court, as if the Special Tribunal were a Court of Session trying cases without a jury within the local limits of the High Court's jurisdiction.

Bar of
certain
jurisdic-
tion.

16. No Court shall have authority to transfer any case from a Special Tribunal, or, save as provided in section 15, have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

Burden of
proof in
certain
cases.

17. When any person is prosecuted for an offence of black marketing, in respect of an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he had such authority, permit, licence or other document, shall be on him.

Accused
person
to be
competent
witness.

18. Any person charged with an offence of black marketing shall be a competent witness, for the defence, and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except on his own request;

(Section 19.)

- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
 - (ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
 - (iii) he has given evidence against any other person charged with the same offence.

19. (1) Where any accused, in a trial before a Court under this Act, is, for any reason incapable of appearing or fails to appear before the Court, or resists his production before the Court, or behaves before the Court in a persistently disorderly manner, the Court may, for reasons to be recorded in writing, at any stage of the trial, by order in writing made after such inquiry as it thinks fit, dispense with the attendance of such accused for such periods as it may think fit, and proceed with the trial in the absence of the accused.

Special procedure for trial in the absence of accused persons.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or of being present in person if he has become capable of appearing, or appears before the Court and undertakes to behave in an orderly manner.

Act V of 1898.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no finding, sentence or order passed in such trial shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

(Sections 20, 21.)

Notice of conviction to be displayed in or outside shops.

20. (1) Upon the conviction of any person for the offence of black marketing, the Provincial Government may require that person to exhibit in or outside or both in and outside his place of business (if any), notices of such number, size and lettering, in such positions and containing such particulars relating to the conviction as the Provincial Government determines and to keep them so exhibited continuously for a period of not less than three months from the date of conviction; and the person shall comply fully with that requirement; and if he fails to do so, shall again be guilty of the offence of black marketing.

(2) If any such person refuses or fails to comply with any such requirement, any officer authorised in that behalf by an order in writing passed by the Provincial Government may, without prejudice to any proceedings arising out of any such refusal or failure, affix the notices in or outside or both in and outside the place of business in accordance with the requirement of the Provincial Government in pursuance of the last preceding sub-section.

(3) Any person who obstructs any such officer in exercise of any power conferred by this section shall be deemed to have committed an offence under section 353 of the Indian Penal Code.

Act XLV
of 1860.

(4) The notices shall be headed with the words "Black Marketing Act, 1948" in bold letters and shall be prepared in such a manner as to be easily legible to persons contemplating making any purchases or conducting any business at the place of business where they are affixed.

(5) If the Provincial Government is satisfied that the exhibition of notices in accordance with the requirements of the foregoing provisions of this section would not be effective to bring the fact of the conviction to the notice of persons dealing with the convicted person, the Provincial Government may, in lieu of or in addition to making any such requirement, require the convicted person to print or cause to be printed on the letter-heads to be used by him in connection with his business during a period of not less than three months from the date of the conviction, a notice headed "Black Marketing Act, 1948" in bold type and of such size and lettering, in such position and containing such particulars relating to the conviction as the Provincial Government determines; and the convicted person shall comply fully with that requirement, and if he fails to do so, shall again be guilty of the offence of black marketing.

Particulars of conviction to be published in the Gazette, etc.

21. (1) Particulars relating to the conviction of any person for an offence against this Act shall be published in the *Official Gazette*.

(2) If the Provincial Government is satisfied that it is necessary so to do, in order to give adequate publicity to the offence of black marketing committed by any person, it may issue a press note containing as full and adequate an account of the trial and conviction of any such person as is

1948 of 1948.]

(Sections 22—24.)

reasonable in all the circumstances; and it shall be the duty of every Editor, Printer and Publisher of such newspaper in West Bengal as the Provincial Government may direct to publish the full text of such press note.

(3) If any Editor, Printer or Publisher of such a newspaper contravenes the provisions of sub-section (2), he shall, on a complaint made by order of or under authority from the Provincial Government, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

22. Offences under section 20 or section 21 shall be triable by a Presidency Magistrate or a Magistrate of the first class.

Offences under section 20 or section 21 triable by a Presidency Magistrate or a Magistrate of the first class.

23. Where any person is convicted of the offence of black marketing the Provincial Government may, if it thinks fit, by an order in writing duly served upon such person, direct that such person after the expiry of his sentence shall remove himself from such area and within such time and by such route as may be specified in the order and not to return thereto for a period to be specified in the order without written permission of the Provincial Government:

Extermment of persons convicted.

Provided that a person who and whose father were born in the Province of West Bengal or who is a member of a family which has definitely settled in that province and is himself so settled shall not be directed to remove himself beyond the boundaries of the Province of West Bengal.

24. Any person who having been directed by an order made and served on him under section 23,—

Failure to comply with the order of extermment.

(a) fails to remove himself from any area directed by such order, or

(b) having removed himself from such area returns thereto in contravention of such order

may be arrested without a warrant by any police officer, and—

(i) may be removed in police custody outside such area, or

(ii) on conviction before a Magistrate shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

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[West Ben. Act XXXI of 1948]

(Sections 25—27.)

Indem-
nity.

25. No suit, prosecution or legal proceedings whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

Continu-
ance of
action
taken
under
West
Bengal Or-
dinance VI
of 1948.

26. Any rule, order or appointment made or any notification issued or anything done or any penalty, forfeiture or punishment incurred or imposed or any action taken or any proceedings commenced in exercise of any power conferred by the West Bengal Black Marketing Ordinance, 1948, shall on the said Ordinance ceasing to be in operation, be deemed to have been made, issued, done, incurred, imposed, taken or commenced in exercise of the powers conferred by this Act as if this Act had commenced on the 1st day of January, 1948.

West Ben.
Ord. VI of
1948.

Rule-
making
power.

27. The Provincial Government may make rules for carrying out the purposes of this Act.

West Bengal Act XXXIII of 1948¹

THE WEST BENGAL MATERNITY BENEFIT (TEA ESTATES) ACT, 1948.

[28th October, 1948.]

An Act to regulate the employment of women in tea factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in tea factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Maternity Benefit (Tea Estates) Act, 1948.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, direct.

2. In this Act, unless there is anything repugnant in the Definitions.
the subject or context,—

(a) "child" includes a still-born child;

(b) "employer" includes the occupier and the manager of a plantation or a factory;

(c) "expected day of her delivery" means the expected day of delivery of a woman as determined by the medical practitioner referred to in sub-section (1) of section 6;

(d) "factory" means—

(i) a factory as defined in clause (j) of section 2 of the Factories Act, 1934, or

(ii) a place declared to be a factory under sub-section (1) of section 5 of that Act,

in which any process is carried on for the manufacture of tea or in which any process is carried on incidental to or connected with such manufacture;

(e) "maternity benefit" means the sum of money payable under the provisions of this Act to a woman employed in a plantation or a factory;

(f) "nurse" includes a midwife or a trained *dhai*;

XXV of
1934.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 16th March, 1948, Part IV, page 289; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th September, 1948.

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[West Ben. Act

(Sections 3, 4.)

- (g) "plantation" means any estate which is maintained for the purpose of growing tea [the plant *Camellia Thea* (Linn)] and in which twenty or more women are employed, or were employed on any day of the preceding twelve months, for that purpose;
- (h) "prescribed" means prescribed by rules made under this Act;
- (i) "woman" means a woman worker; and
- (j) expressions used, but not defined in this Act, have, where they have been defined in the Factories Act, 1934, the same meaning as in that Act. XXV of 1934.

Employment of, or work by, women in factories prohibited during certain period.

3. After this Act comes into force—

- (1) no employer shall knowingly employ a woman in any factory or plantation during the six weeks immediately following the day of her delivery; and
- (2) no woman shall work in any factory or plantation during the six weeks immediately following the day of her delivery.

Right to, and liability for, payment of maternity benefit.

4. Subject to the provisions of this Act, every woman employed in a factory or a plantation shall be entitled to, and her employer shall be liable for, the payment of maternity benefit in respect of the period of six weeks preceding the expected day of her delivery and six weeks immediately following the day of her delivery:

Provided that a woman shall not be entitled to such maternity benefit unless she has worked in any factory or plantation of the employer from whom she claims maternity benefit for not less than one hundred and fifty days in the twelve months immediately preceding the expected day of her delivery:

Provided further that a woman shall not be entitled to such maternity benefit if she has not—

- (a) permitted herself to be medically examined as required in sub-section (1) of section 6, or
- (b) during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery and during the six weeks immediately following the day of her delivery attended or permitted herself to be treated in any clinic or hospital, or permitted herself to be treated by any medical practitioner or nurse as required in sub-section (2) of section 6:

Provided further that non-compliance by the woman with the provisions of sub-section (2) of section 6 before the day of

The West Bengal Maternity Benefit (Tea Estates) Act, 1948. 473

XXXIV of 1948.]

(Sections 5—7.)

her delivery shall not disentitle her to maternity benefit if the medical practitioner referred to in sub-section (3) of section 6 certifies that in his opinion such non-compliance was due to premature delivery or to a *bona fide* miscalculation on the part of the woman as to the state of advancement of her pregnancy.

5. The maternity benefit which is compulsorily payable under section 4 shall be payable at the rate of five rupees and four annas a week for every week during the period of twelve weeks referred to in that section and such payment shall be made either wholly in cash or partly in cash and partly in kind.

Amount of maternity benefit.

6. (1) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall permit herself to be medically examined by, or under the direction of, the medical practitioner referred to in sub-section (3) for the purpose of enabling him to determine the expected day of her delivery and such medical practitioner shall after such examination furnish her with a certificate as to the expected day of her delivery.

Ante-natal and post-natal care of women.

(2) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall, during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery and during the six weeks immediately following the day of her delivery,—

(a) where free ante-natal and post-natal treatment is provided for her in any hospital or clinic approved in this behalf by the prescribed medical authority, attend such hospital or clinic as required by the medical officer-in-charge thereof and permit herself to be treated therein, or

(b) where there is no such hospital or clinic, permit herself to be treated by such medical practitioner or nurse as is provided by her employer under sub-section (3).

(3) Every employer shall arrange that the services of a medical practitioner and a nurse approved in this behalf by the prescribed medical authority are always available in his factory or plantation for the purpose of giving free ante-natal and post-natal treatment or advice to the women of his factory or plantation.

7. Notwithstanding that a woman has given notice under sub-section (1) of section 8 that she expects to be confined within one month and a half next following, she may, during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery, undertake light work in the factory or plantation of the employer from whom she claims maternity benefit if and for so long as the medical practitioner referred to in sub-section (3) of section 6 certifies that

Amount of work which can be undertaken by a woman during ante-natal period.

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Act, 1948.**

(West Ben. Act

(Sections 8, 9.)

she is physically fit so to do, and for the days that she does such work she shall be paid at the prevailing rate of pay for such work, and such pay shall be paid to her in addition to the maternity benefit which she may be entitled to receive under this Act.

**Procedure
regarding
payment of
maternity
benefit.**

8. (1) Any woman who claims or intends to claim maternity benefit under the provisions of this Act shall, on any day, give notice either orally in person or in writing to the employer of the factory or the plantation that she expects to be confined within one month and a half next following and submit at the same time to such employer the certificate referred to in sub-section (1) of section 6 and may nominate in the prescribed form a person for purposes of section 9.

(2) When the notice and the certificate referred to in sub-section (1) are received the employer shall permit the woman who has given the notice to absent herself from work in the factory or plantation on and from the day following that on which such notice and certificate are received until the expiration of six weeks after the day of her delivery.

(3) An employer shall pay the maternity benefit as provided in section 5 to a woman entitled thereto under this Act in twelve equal weekly instalments and the payment of the first instalment thereof shall be made within seven days of the giving of the notice together with the certificate referred to in sub-section (1) by such woman.

(4) If an employer is satisfied on the report of a medical practitioner or medical officer-in-charge of the clinic or hospital referred to in sub-section (2) of section 6 that a woman has ceased according to the provisions of section 4 to be entitled to maternity benefit such employer may discontinue the payment of maternity benefit payable to such woman under sub-section (3).

(5) Any woman who considers herself aggrieved at any cessation of payment of maternity benefit under sub-section (4) may, within thirty days of the date of payment of the last instalment of maternity benefit paid to her under sub-section (3), apply in the prescribed manner to the Inspector of Factories, West Bengal, who after giving both parties an opportunity of being heard may reject the application, or direct the employer to pay to the woman the remaining portion of the maternity benefit, as he deems fit. An appeal from the decision of the Inspector of Factories, West Bengal, shall, within thirty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final.

**Payment
of mater-
nity
benefit in
case of the
death of a
woman.**

9. (1) If a woman entitled to maternity benefit under this Act dies on the day of her delivery or during the period thereafter in respect of which she is entitled to the maternity benefit, the liability of the employer under section 4 shall not, by reason of her death, be discharged, and he shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the

**The West Bengal Maternity Benefit (Tea Estates) 475
Act, 1948.**

XXVIII of 1948.]

(Sections 10—12.)

child; and, if the child does not survive her, to the person nominated by her under sub-section (1) of section 8 or, if she has made no such nomination, to her next of kin as determined by the employer whose decision shall be final.

(2) If a woman dies during the period in respect of which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the payment of half the amount of maternity benefit due under section 5. Any amount due at the death of the woman shall be paid to the person nominated by her under sub-section (1) of section 8, or, if she has made no such nomination, to her next of kin as may be determined by the employer whose decision shall be final.

10. (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

No notice of dismissal to be given to a woman in certain

(2) (a) No notice of dismissal given without sufficient
~~notice to an employer to a woman~~
Page 475—

In clause (b) of section 11, for the words "four weeks", substitute the words "six weeks".

(Substituted by West Ben. Act XII of 1950, section 2.)

[No. 45, dated the 2nd December, 1950.]

west Bengal, in the prescribed manner. An appeal from the decision of the Inspector shall, within sixty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final.

11. If a woman—

- (a) after she has been permitted by her employer under sub-section (2) of section 8 to absent herself from work in a factory or plantation, does any work, other than that provided for under section 7 before the day of her delivery, or
- (b) works in a factory or plantation or elsewhere during the four weeks immediately following the day of her delivery,

Penalty to woman for doing work in contravention of the Act.

she shall be liable, on conviction, to a fine not exceeding ten rupees.

12. (1) If any employer contravenes any provision of this Act, he shall, on conviction, be liable to a fine which may extend to five hundred rupees.

Penalty for contravention of the Act by an employer and application of fine in payment of compensation.

(2) Whenever a Court imposes a fine under this section or confirms in appeal, revision or otherwise such a sentence, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment of compensation to the woman concerned for any loss or damage caused to her by the contravention of a provision of this Act on account of which the fine has been imposed.

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Act, 1948.**

[West Ben. Act]

(Sections 13—16.)

**Cogni-
zance of
offences.**

13. (1) No prosecution under this Act shall be instituted except by, or with the previous sanction of, the Inspector of Factories, West Bengal, and no such prosecution shall be instituted until the expiry of the period of appeal under sub-section (2) or, if such an appeal is preferred, unless the Labour Commissioner, West Bengal, by his order thereon sanctions a prosecution.

(2) Where the Inspector of Factories, West Bengal, decides either to institute a prosecution under this Act or to grant sanction thereto, he shall forthwith communicate his order to the person complained against, who may, within thirty days of the date of the said order, appeal in the prescribed manner to the Labour Commissioner, West Bengal, against such decision. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final.

(3) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try any offence against this Act or any rules made thereunder.

**Appeal
against
refusal to
prosecute
or grant
sanction
thereto.**

14. Where on an application by an employer or a woman in such behalf, the Inspector of Factories, West Bengal, refuses either to institute a prosecution under this Act or to grant previous sanction thereto, he shall without delay communicate to the applicant his order of refusal and an employer or a woman aggrieved by such order may, within thirty days of the date thereof, appeal in the prescribed manner to the Labour Commissioner, West Bengal, against such order. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final.

**Limitation
of prosecu-
tion.**

15. No Court shall take cognizance of any offence against this Act or any rule made thereunder unless complaint thereof has been made to the Inspector of Factories, West Bengal, within six months of the date on which the offence is alleged to have been committed.

Rules.

16. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such rules may provide for—

(a) the preparation and maintenance of a muster roll or register or a combined muster roll and register, and the particulars to be entered in such muster roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 41 of the Factories Act, 1934;

**XXV of
1934.**

(b) the inspection of factories for the purposes of this Act by the Inspector of Factories, West Bengal;

*The West Bengal Maternity Benefit (Tea Estates) 477
Act, 1948.*

XXXIII of 1948.]

(Section 17.)

- (c) the exercise of powers and the performance of duties by Inspector of Factories, West Bengal, or the medical authority referred to in section 6 for the purposes of this Act;
- (d) the method of payment of maternity benefit in so far as provision has not been made in this Act;
- (e) the medical authority referred to in section 6;
- (f) the form of nomination referred to in sub-section (1) of section 8; and
- (g) the procedure to be observed—

- (i) in submitting applications to the Inspector of Factories, West Bengal, and the disposal of appeals under sub-section (5) of section 8,
- (ii) in referring questions for decision to the Inspector of Factories, West Bengal, and the disposal of appeals under clause (b) of sub-section (2) of section 10, and
- (iii) in the disposal of appeals under sub-section (2) of section 13 or section 14.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The power to make rules under this Act shall be subject to the condition of previous publication.

17. An abstract of the provisions of this Act and the rules thereunder in the local vernaculars shall be exhibited in a conspicuous manner by the employer in every part of a tea factory or a plantation in which women are employed.

Abstract
of this Act
and the
rules there-
under to be
exhibited.

West Bengal Act XXXVII of 1948¹

THE WEST BENGAL HINDU SOCIAL DISABILITIES REMOVAL ACT, 1948.

[11th November, 1948.]

An Act to provide for the removal of certain social disabilities suffered by some sections of Hindus.

WHEREAS it is expedient to foster a spirit of unity and harmony amongst all classes of people and, to that end, to provide for the removal of certain social disabilities suffered by some sections of Hindus;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Hindu Social Disabilities Removal Act, 1948. Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) "Hindu" includes a Buddhist, Sikh, Jain, Santal, Adibasi, a follower of Arya or Brahma Samaj or a convert to Hinduism or any other person habitually professing himself to be a Hindu;

(b) "Local authority" means a local authority as defined in clause (23) of section 3 of the Bengal General Clauses Act, 1899, other than a cantonment authority or the Commissioners for the Port of Calcutta;

(c) "place of public amusement" means any place, enclosure, building, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing or any diversion or game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money or with the intention that money may be collected from those admitted and includes a fair, mela, race-course, circus, cinema, theatre, music hall, billiard-room, bagatelle-room, gymnasium or fencing school, and a stadium, stand or gallery from where any game or show is watched;

(d) "place of public entertainment" means any place, whether enclosed or open, to which the public are admitted, and where any kind of food or drink is supplied for consumption on the premises for the

Ben. Act
I of 1948.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary*, dated the 2nd March, 1948, Part IV, page 241; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meetings of the West Bengal Legislative Assembly held on the 20th and the 21st September, 1948.

(Section 3.)

profit or gain of any person owning or having an interest in or managing such place, and includes a refreshment room, eating house, coffee house, tea shop, boarding house, lodging house and hotel;

(e) "shop" means any premises where goods are sold either by retail or wholesale or both and includes a laundry, a hair cutting saloon or such other place where services are rendered to customers;

(f) "temple" means a place, by whatever name known, which is dedicated to, or for the benefit of, or used as of right by, the Hindu community in general as a place of public religious worship, and includes subsidiary shrines and mantapams attached to such place; and

(g) "worship" means such religious service as the bulk of worshippers at a temple may offer.

Equality
of rights
of all
castes and
class of
Hindus.

3. Notwithstanding anything contained in any instrument or any law, custom or usage to the contrary, no Hindu shall merely on the ground that he belongs to a particular caste or class—

(a) be ineligible for office under any authority constituted under any law, or

(b) be prevented from—

(i) having access to or offering worship at any temple; or

(ii) having access to or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing place, burial or cremation ground, any sanitary convenience, any road or pathway which the members of other castes or classes of Hindus generally have a right to use or have access to; or

(iii) having access to or using any public conveyance licensed by the Provincial Government or any local authority to ply for hire; or

(iv) having access to or using any building or place used for charitable or public purposes maintained wholly or partially out of the revenues of the Province or the funds of a local authority; or

(v) having access to a place of public amusement or a place of public entertainment; or

(vi) having access to a shop to which the members of other castes and classes of Hindus generally are ordinarily admitted; or

(vii) having access to or using any place set apart or maintained for the use of Hindus generally; or

**The West Bengal Hindu Social Disabilities Removal 481
Act, 1948.**

XXXXX-1948

(Sections 4—8.)

(viii) enjoying any benefit under a charitable trust created for the benefit of Hindus generally; or

(c) be denied any service whatsoever whether in connection with civic, social or religious practices or rites, by a Hindu who habitually renders such service in the course of his profession.

4. No person in charge of any of the places referred to in sub-clauses (i), (ii), (iv), (v), (vi) and (vii) or any conveyance referred to in sub-clause (iii) of clause (b) of section 3 shall impose any restriction on any Hindu or act in a manner as to result in discrimination against him merely on the ground that he belongs to a particular caste or class.

Discrimi-
nation on
grounds of
caste or
class pro-
hibited.

5. Except in matters governed by Hindu Law, no Court shall in adjudicating any matter or executing any order recognise any custom or usage (other than a custom or usage having the force of law) imposing any social disability on any Hindu merely on the ground that he belongs to a particular caste or class.

Courts not
to recog-
nise any
custom or
usage
imposing
disability
on a
Hindu on
ground of
caste or
class.

6. No local authority shall in carrying out the functions and duties entrusted to it under any law recognise any custom or usage imposing any social disability on any Hindu merely on the ground that he belongs to a particular caste or class.

Local
authori-
ties not
to recog-
nise any
custom or
usage
imposing
disability
on ground
of caste or
class.

7. No Hindu shall be denied admission to any school, college or other educational institution meant for the public merely on the ground that he belongs to a particular caste or class.

No Hindu
to be
denied
admission
to any
educa-
tional in-
stitution on
ground of
caste or
class.

8. (1) Whoever—

Penalties.

(a) prevents any Hindu by reason of his belonging to a particular caste or class from having access to or using any of the places referred to in sub-clauses (i), (ii), (iv), (v), (vi) and (vii) or any conveyance referred to in sub-clause (iii) of clause (b) of

[West Ben. Act XXXVII of 1948.]

(Sections 9, 10.)

section 3 or from enjoying any benefit under a charitable trust referred to in sub-clause (viii) of clause (b) of the said section or denies to any Hindu any service referred to in clause (c) of that section or abets such prevention or such denial; or

(b) contravenes the provisions of section 4 or section 7 or abets the contravention thereof,

shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to rupees two hundred or with both and if he is the owner or occupier of any place of public amusement or of any place of public entertainment, or of any shop in regard to which the offence is committed, shall, in addition, be liable to have his license or permit, if any, in respect of such place of public amusement or such place of public entertainment or such shop cancelled.

(2) An offence under sub-section (1) shall be deemed to be an offence included under Part A of Schedule IV to the Bengal Village Self-Government Act, 1919, and shall be tried in accordance with the provisions of that Act.

Ben. Act
V of 1919.

Offences under the Act to be investigated by a police officer without the order of a Magistrate.

9. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a police officer may investigate an offence punishable under this Act without the order of a Magistrate.

Act V of 1898.

Power to make rules.

10. The Provincial Government may make rules for the purpose of carrying out the provisions of this Act.

West Bengal Act XXXVIII of 1948

THE WEST BENGAL PREMISES RENT CONTROL (TEMPORARY PROVISIONS) ACT, 1948.

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The West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.

[West Ben. Act XXXVIII of 1948.]

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SECTION.

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Part A.

Part B.

West Bengal Act XXXVIII of 1948¹

THE WEST BENGAL PREMISES RENT CONTROL (TEMPORARY PROVISIONS) ACT, 1948.

[16th November, 1948.]

An Act to make better provision for the control of rents of premises in Calcutta and in certain other areas in West Bengal.

WHEREAS it is expedient to make better provision for the control of rents of premises in Calcutta and in certain other areas in West Bengal;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.

(2) It shall come into force on such date² as the Provincial Government may, by notification, appoint.

(3) It extends to the whole of Calcutta and to all areas which have been or may hereafter be constituted municipalities under the provisions of the Bengal Municipal Act, 1932:

Short title
com-
mence-
ment, ex-
tent and
duration.

Ben. Act
XV of
1932.

Provided that the Provincial Government may, by notification, extend this Act or any specified part thereof to any other area specified in the notification if the Provincial Government is satisfied that the area contains a number of inhabitants not less than the number required under clause (i) of the proviso to sub-section (1) of section 6 of the Bengal Municipal Act, 1932, for the area to be declared a

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 24th August, 1948, Part IV, page 705;

for proceedings in the West Bengal Legislative Assembly, see the minutes of the proceedings of the meetings of the West Bengal Legislative Assembly held on the 22nd and the 23rd September, 1948.

²The Act was brought into force on the 1st December, 1948, vide notification No. 8998L.Ref., dated the 22nd November, 1948, published at page 1570 of the *Calcutta Gazette* of the 25th November, 1948.

The Act was brought into force on the 1st December, 1948, in—

- (i) Barrackpore Cantonment Area,
- (ii) Balurghat, West Dinajpore,
- (iii) Contai, Midnapore, and
- (iv) Kharagpore, Midnapore,

vide notifications Nos. 9050L.R., 9052L.R., 9054L.R. and 9056L.R., respectively, dated the 24th November, 1948, published in the *Calcutta Gazette*, dated the 1st December, 1948, Part I, pages 1185 and 1186.

The Act came into force in Darjeeling district on the 1st December, 1948, vide notification No. 8998L. Ref., dated the 22nd November, 1948, at page 1570 of the *Calcutta Gazette*, dated the 25th November, 1948.

(Chapter I.—Preliminary.—Section 2.)

municipality and that three-fourths of the adult male population of the area are chiefly employed in pursuits other than agriculture:

Provided further that the Provincial Government may, by notification, direct that this Act or any specified part thereof shall not apply to any such area or to any such class of premises as may be specified in such notification and if any question arises as to whether, or not, any premises come within such area or class, the decision of the Provincial Government thereon shall be final.

(4) It shall, in the first instance, remain in force up to the 31st day of March, 1950, but if, and so often as, a resolution approving its continuance for any further period is passed by the Provincial Legislature, it shall continue in force for such further period, so, however, that it shall not, in any case, continue in force after the 31st day of March, 1953:

Provided that the expiration of this Act shall not render recoverable any sum which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance of this Act was recoverable by him thereunder.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "Calcutta" has the same meaning as in clause (11) of section 3 of the Calcutta Municipal Act, 1923; Ben. A III of 1923.
- (2) "Controller" means a Controller appointed under sub-section (1) of section 28 and includes an Additional Controller and a Deputy Controller appointed under sub-section (2) of that section;
- (3) "hotel or lodging house" means an establishment where lodging with or without board or other service is provided for a monetary consideration;
- (4) "landlord" means any person who for the time being is receiving, or is entitled to receive, the rent of any premises whether on his own account or on account, or on behalf, or for the benefit, of any other person, or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant and includes a legal representative, as defined in the Code of Civil Procedure, 1908, of the landlord; Act V 1908.
- (5) "manager of a hotel" includes any person in charge of the management of a hotel;

XXXVIII of 1948.]

(Chapter I.—Preliminary.—Section 2.)

- (6) "notification" means a notification published in the *Official Gazette*;
- (7) "owner of a lodging house" includes any person who receives, or is entitled to receive, whether on his own account, or on account, or on behalf, or for the benefit of himself and others, or as an agent, trustee, guardian or receiver for any other person, any monetary consideration from any person on account of board or lodging or other service;
- (8) "premises" means any building or part of a building or any hut or part of a hut let separately and includes—
- (a) the gardens, grounds and out-houses (if any) appertaining to such building or part of a building or hut or part of a hut,
 - (b) any furniture supplied or any fittings affixed by the landlord for use in such building or part of a building or hut or part of a hut,
- but does not include a room or part of a room or other accommodation in a hotel or lodging house or a stall in a municipal market as defined in clause (44) of section 3 of the Calcutta Municipal Act, 1923, or in any other market maintained by or belonging to a local authority or a stall let at variable rents at different seasons of the year for the retail sale of goods in any other market as defined in clause (39) of section 3 of the Calcutta Municipal Act, 1923, or clause (30) of section 3 of the Bengal Municipal Act, 1932;
- (9) "prescribed" means prescribed by rules made under this Act;
- (10) "standard rent" in relation to any premises means—
- (a) where the rent of any premises has been fixed under section 9, the rent so fixed;
 - (b) where the rent has not been so fixed, the standard rent determined in accordance with the provisions of the schedule;
- (11) "tenant" means any person by whom, or on whose account, rent is, or but for a special contract would be, payable for any premises and includes a legal representative, as defined in the Code of Civil Procedure, 1908, of the tenant and a person continuing in possession after the termination of a tenancy in his favour.

Ben. Act
III of 1923,
Ben. Act
XV of
1932.

Act V of
1908

(Chapter II.—Provisions regarding rent and *salami*.—
Sections 3—6.)

CHAPTER II.

PROVISIONS REGARDING RENT AND *salami*.

Restric-
tion on the
increase of
rents.

3. (1) Subject to the provisions of this Act, where the rent of any premises has been or is hereafter during the continuance of this Act, increased so as to exceed the standard rent, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that nothing in this sub-section shall apply to any periodical increment of rent accrued due under any written agreement entered into before the first day of December, 1941.

(2) For the purposes of sub-section (1), the rent shall be deemed to have accrued from day to day.

Premium,
salami or
fine not to
be claimed,
received or
asked for
or advance
of more
than one
month's
rent not to
be claimed
or re-
ceived.

4. No person shall, in consideration of the grant, renewal or continuance of a tenancy of any premises,—

- (a) claim, receive, or invite offers or ask for the payment of, any premium, *salami*, fine or any other like imposition in addition to the rent, or
- (b) except with the previous written consent of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

Exception
in the case
of long
leases for
purposes
of deve-
lopment.

5. Notwithstanding anything contained in section 4, a landlord may receive a premium or *salami* or other like sum in addition to the rent in respect of any premises which are let on a lease for a period of not less than twenty years for the purposes of development by the lessee either by building or rebuilding if the period limited by the lease is not expressed to be terminable at the option either of the landlord or of the tenant at any time within a period of five years from the date of commencement of the period so limited:

Provided that the rent payable for the premises during the continuance of this Act shall not exceed the standard rent.

Restric-
tion on the
sale of
furniture
in any pre-
mises let to
a tenant.

6. (1) No person shall make the purchase of any furniture in any premises a condition of the grant, renewal or continuance of a tenancy of such premises and no person shall sell the furniture in any premises of which he is the landlord to the tenant of such premises or to any person to whom the premises are afterwards let except under a permit in the prescribed form from the Controller.

XXXVIII of 1948.]

*(Chapter II.—Provisions regarding rent and salami.—
Sections 7—9.)*

(2) No landlord shall be entitled to recover as the price of any furniture in any premises on sale of such furniture to the tenant of such premises or to any person to whom the premises are afterwards let, any sum in excess of the market-value of such furniture; and the Controller may, on application made to him by any person interested and on payment of the prescribed fee, determine the market-value of such furniture recoverable under this sub-section.

7. (1) Where any sum has been paid or deposited on or after the date of the commencement of this Act or within a period of six months before such date in respect of the occupation of any premises,—

Refund of
rent, pre-
mium,
salami,
etc., not
recover-
able under
the Act.

(a) on account of rent, being a sum which is by reason of the provisions of this Act irrecoverable, or

(b) as premium, *salami*, fine or other like imposition in addition to the rent or as rent in advance, the claiming or the receiving of which is prohibited under this Act, or

(c) on account of price of any furniture in such premises, being a sum which is in excess of the market-value of such furniture and the recovery of which is prohibited under this Act,

the Controller may, on application made to him in this behalf at any time within a period of six months from the date of such payment or deposit by the tenant by whom such payment or deposit was made, order the landlord by whom such payment was received or to whose credit such deposit was made, to refund such sum to such tenant or, at the option of such tenant, order the adjustment of any sum so paid or deposited in any other manner.

(2) An order of refund passed by the Controller under sub-section (1) shall be executed by the Court having jurisdiction to entertain a suit for the recovery of arrears of rent in respect of the premises in relation to which the sum ordered to be refunded was paid or deposited, as if such order of refund were a decree of that Court.

8. The Controller shall, on application made to him by any landlord or tenant, grant a certificate stating the standard rent referred to in sub-clause (b) of clause (10) of section 2, of any premises let or rented by such landlord or tenant, as the case may be.

Grant of
certificate
of stan-
dard rent
by the
Controller.

9. In any of the following cases, the Controller shall, on application made to him by any landlord or tenant, fix the standard rent of the premises at such amount as, having regard to the provisions of this Act and the circumstances of the case including the municipal rates, taxes or cesses payable in respect of the premises, he deems just—

Cases in
which -
standard
rent shall
be fixed
by the
Controller.

(a) where any premises have been or are erected after the first day of October, 1946;

*(Chapter II.—Provisions regarding rent and salami.—
Section 10.)*

- (b) where by reason of any premises having been let at one time as a whole, and at another time in parts, or where for any other reason, any difficulty arises in giving effect to this Act;
- (c) where any premises have been or are let rent-free, or at a nominal rent, or for some consideration in addition to rent;
- (d) where some addition, improvement or alteration not included in necessary repairs or repairs which are usually made to premises in the locality, has been made at any time after the first day of October, 1946, to any premises at the landlord's expense;
- (e) where any furniture has been supplied on or after the first day of October, 1946, by the landlord for use in any premises or where any premises which were let without any furniture on or after the said date are subsequently let furnished;
- (f) where there has been an increase in the municipal rates, taxes or cesses in respect of any premises;
- (g) where for any other sufficient cause the rent at which the premises were let on the first day of October, 1946, or at which the premises are for the time being let is not, in the opinion of the Controller, just and fair; or
- (h) where the provisions of sub-section (3) of section 11 or of section 13 apply and there is a dispute about the rent or the apportionment of rent:

Provided that in fixing the standard rent,—

- (i) under clause (a), the Controller shall take into account the prevailing rate of rent in the locality for similar accommodation with similar advantages and amenities;
- (ii) under clause (d), the Controller shall not increase the rent by more than ten *per centum per annum* of the amount expended on the addition, improvement or alteration made to the premises; and
- (iii) under clause (e), the Controller shall take into consideration the market-value on the date on which the standard rent is so fixed of the furniture supplied.

Date on
which
standard
rent fixed
by the
Controller
takes
ct.

. 10. In every case in which the Controller fixes the standard rent, or in fixing the standard rent allows any increase in the rate of rent payable, in respect of any premises, he shall appoint a date from which the standard rent so fixed or the increase so allowed shall be deemed to have effect and such date may be any date anterior to the date of any order of the Controller under this section if the

XXXVIII of 1948.]

(Chapter II.—Provisions regarding rent and salami.—
Chapter III.—Suits and proceedings for eviction.—
Section 11.)

Controller deems such anterior fixation of the date just and proper in the circumstances of the case but shall not be subsequent to the date on which the application under section 9 is made :

Provided that where the standard rent is fixed under clause (f) of section 9, such standard rent shall be deemed to have effect from the date on which the increase in the municipal rates, taxes or cesses came into force.

CHAPTER III.

SUITS AND PROCEEDINGS FOR EVICTION.

IV of
1882,
XV of
1882,
IX of
1872.

11. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, the Presidency Small Cause Courts Act, 1882, or the Indian Contract Act, 1872, no order or decree for the recovery of possession of any premises shall be made as long as the tenant pays to the full extent the rent allowable by this Act and performs the conditions of the tenancy :

No order
for eject-
ment
ordinarily
to be
made if
rent paid
at allow-
able rate.

Provided that nothing in this sub-section shall apply,—

- (a) where the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act, 1882, or
- (b) where the tenant has sublet, or otherwise transferred his interest in, the premises—
 - (i) for more than six consecutive months and to the extent either of the whole or a major portion of the premises, in the absence of any contract or other authority in writing expressly permitting such subletting or transfer, or
 - (ii) in any manner in contravention of the terms of a contract in writing expressly prohibiting such subletting or transfer; or
- (c) where the tenant has been using the premises or allowing the premises to be used for immoral or illegal purposes, or
- (d) where the condition of the premises has materially deteriorated owing to acts of waste by, or negligence or default of, the tenant or any person residing with the tenant, or
- (e) where the tenant has been guilty of conduct which is a nuisance or an annoyance to occupiers of adjoining or neighbouring premises, or
- (f) where the premises are *bona fide* required by the landlord either for purposes of building or rebuilding, or for his own occupation or for the occupation of any person for whose benefit the premises are held.

*(Chapter III.—Suits and proceedings for eviction.—
Section 12.)*

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall not be lawful after the commencement of this Act, for a tenant inferior to a tenant of the first degree to let in whole or in part the premises let to him except with the consent of the landlord and of the tenants of a superior degree above him.

Explanation.—In this sub-section—

- (a) “a tenant of the first degree” means a tenant who does not hold under any other tenant;
- (b) “a tenant inferior to a tenant of the first degree” means a tenant holding immediately or mediately under a tenant of the first degree;
- (c) “landlord” means the landlord of a tenant of the first degree.

(3) Any person to whom any premises or any part thereof have been or has been lawfully sublet by a tenant shall, where the interest of the tenant in such premises or part is lawfully determined otherwise than by virtue of a decree or order obtained by the landlord on any of the grounds specified in clause (f) of the proviso to sub-section (1), be deemed to be a tenant in respect of such premises or part, as the case may be, holding directly under the landlord on the terms and conditions on which such person would have held under the tenant if the interest of the tenant had not been so determined:

Provided that it shall be competent for the landlord, or any person deemed under this sub-section to be a tenant holding directly under the landlord, to make an application under section 9 to the Controller for fixing the standard rent of the premises or part thereof in respect of which such person is so deemed to be a tenant and until any standard rent is fixed by the Controller on such application such person shall be liable to pay to the landlord the same rent as was payable by him in respect of the premises or part thereof, as the case may be, to the tenant before the interest of the tenant therein had been determined.

When a tenant can get the benefit of protection against eviction.

12. (1) No tenant shall be entitled to the benefit of section 11 in respect of any premises unless—

- (a) he pays the rent allowable by this Act and due by him in respect of such premises to the full extent within the time fixed in the contract with his landlord or, in the absence of such contract, by the fifteenth day of the month next following that for which the rent is payable, and
- (b) in the case where any rent has accrued due before the commencement of this Act, he also pays within one month after the date of such commencement all arrears of rent allowable by this

XXXIII of 1948.]

*(Chapter III.—Suits and proceedings for eviction.—
Section 12.)*

Act and due by him in respect of such premises to the full extent together with, where the arrears are already the subject-matter of a suit or proceeding before a Court or of any decree or order of Court, interest thereon at the rate of six and a quarter *per cent. per annum* and such costs as the Court may award, and

- (c) in the case where the Controller has, in fixing the standard rent, allowed any increase in the rate of rent payable in respect of such premises with effect from any date earlier than the date of the order, he pays also the amount that has become payable by him on account of such increase, for any period preceding the date of such order, to the full extent and within the time specified in this behalf by the Controller or, in the absence of any such specification, within one month of the date of such order, or

where the landlord refuses to accept any rent referred to in clause (a), clause (b) or clause (c), or where there is a *bona fide* doubt or dispute as to the person who is entitled to receive such rent, unless the tenant deposits such rent and all subsequent rent allowable by this Act which becomes due in respect of such premises as provided in section 19 together with, in the case mentioned in clause (b) of sub-section (1) of that section, the cost of transmission referred to in that clause within the time specified in that section.

Explanation.—A landlord shall not for the purposes of this section be deemed to have refused to accept any rent unless the rent is remitted within the period referred to in clause (a) or clause (b) or clause (c), as the case may be, of this section by postal money order to the address of the landlord and the rent so remitted is returned to the tenant by the postal authorities as undelivered either on account of the landlord having refused to accept payment thereof or for any other cause.

(2) Subject to the provisions of sub-section (3), no suit or proceeding instituted against a tenant after the commencement of this Act for the recovery of possession of any premises on the ground of default in making any payment or deposit referred to in sub-section (1) shall be further proceeded with if, within one month from the date of service of process on the tenant, he pays through the Court all arrears of rent allowable by this Act up to date together with interest thereon at the rate of six and a quarter *per cent. per annum* and such costs as the Court may award.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, if a tenant fails for three consecutive months to pay or deposit in accordance with the provisions of this Act any rent payable by him in respect of any premises which has accrued due after the

(Chapter III.—Suits and proceedings for eviction.—
Sections 13—15.)

commencement of this Act, the interest of the tenant in such premises shall on such failure be *ipso facto* determined and he shall no longer be deemed to be a tenant.

Special
provision
for tenan-
cies for
not less
than seven
years.

13. Notwithstanding anything contained in this Act or in any other law for the time being in force, where a tenant has sublet in whole or in part any premises let to him for a period of not less than seven years, and such period expires on or after the 1st day of October, 1946, the tenant shall not be entitled to the benefit of section 11 in respect of such premises to the extent to which they have been so sublet and in such case the person to whom the premises have been sublet shall be deemed to be a tenant holding directly under the landlord on the terms and conditions on which he held under the tenant in so far as such terms and conditions are consistent with the circumstances of the case and with the provisions of this Act and thereupon the provisions of the proviso to sub-section (3) of section 11 shall apply.

Meaning of
allowable
rent.

14. For the purposes of sections 11 and 12, the rent allowable by this Act in relation to any premises, means—

- (a) where a certificate has been granted by the Controller under section 8, the standard rent stated in such certificate, or
- (b) where the standard rent has been fixed under section 9, the standard rent so fixed, or
- (c) where no certificate has been granted under section 8 and no standard rent has been fixed under section 9, the rent agreed upon between the landlord and the tenant omitting the excess, if any, over the standard rent.

When a
tenant is
entitled
to restora-
tion of
possession
and com-
pensation.

15. Where the landlord recovers possession on the ground that the premises are *bona fide* required by him for purposes of building or re-building or for his own occupation or for the occupation of any person for whose benefit the premises are held, and the building or the re-building of the premises is not commenced, or the premises are not occupied by the landlord or such person, within two months of the date of vacation of the premises by the previous tenant, or the premises, having been so occupied, are re-let within six months of the said date to any person other than the previous tenant without the permission of the Controller obtained in the prescribed manner, the Controller may, on the application of the previous tenant made within seven months of his vacating the premises, by order, direct the landlord to put the previous tenant in possession of the premises or to pay him such compensation as may be fixed by the Controller, or both:

Provided that the Controller may, on the application of the landlord, extend the period within which the building or the re-building of the premises is to be commenced, by two months at a time and six months in all.

XXXVIII of 1948.]*

(Chapter III.—Suits and proceedings for eviction.—
Sections 16—18.)

16. (1) Notwithstanding anything contained in any other law for the time being in force, no suit or proceeding by a landlord against a tenant for the recovery of rent or possession of any premises which the Court of Small Causes of Calcutta is competent to try shall be instituted in, or tried by, any Court other than the said Court of Small Causes of Calcutta.

Special provisions regarding certain suits or proceedings triable by Court of Small Causes of Calcutta.

XV of 1882.

(2) Notwithstanding anything contained in the Presidency Small Cause Courts Act, 1882, or in any rule made thereunder, an appeal from a decree or order of the Court of Small Causes of Calcutta in a suit or proceeding referred to in sub-section (1) shall, if presented within thirty days from the date of the decree or order, as the case may be, lie to a bench of three Judges of the said Court which shall not include the Judge who made such decree or order.

(3) In the event of a difference of opinion among the Judges sitting in appeal under sub-section (2), the opinion of the majority of such Judges shall prevail.

17. (1) Notwithstanding anything contained in any other law for the time being in force, in every suit or proceeding for the recovery of possession of any premises on one or more of the grounds specified in the proviso to sub-section (1) of section 11 or on the ground of non-compliance with the provisions of this Act regarding payment or deposit of rent, the Court shall at the first hearing of such suit or of the application out of which such proceeding has arisen, or as soon as may be thereafter, after giving the parties an opportunity of being heard and considering any affidavits which they may file, decide first if there is sufficient cause for proceeding with the suit or proceeding:

Special procedure for suits and proceedings for eviction of tenants.

Provided that the decision made under this sub-section shall form a part of the decree or order finally disposing of the suit or proceeding, as the case may be, and shall not be subject to any separate appeal or revision.

(2) If the decision referred to in sub-section (1) is sufficient for the final disposal of the suit or proceeding the Court may pronounce judgment or pass orders accordingly, but if the decision is not sufficient for such final disposal, the Court shall adjourn the further hearing of such suit or proceeding for the production of such further evidence or for such further argument as may be necessary for the final disposal of such suit or proceeding.

Explanation.—In this section “proceeding” does not include an execution proceeding.

18. Where any decree or order for the recovery of possession of any premises has been made, before the date of commencement of this Act, but the possession of such premises has not been recovered from the tenant by the execution of such decree or order, the Court by which the decree or order was made may, if it is of opinion that the

Power of Court to rescind or vary decrees and orders in certain

(Chapter III.—Suits and proceedings for eviction.—
Chapter IV.—Deposit of rent.—Section 19.)

decree or order would not have been made if this Act had been in operation at the date of the making of the decree or order, rescind or vary the decree or order in such manner as the Court may think fit for the purpose of giving effect to the provisions of this Act.

CHAPTER IV.

DEPOSIT OF RENT.

Deposit of
rent by
the tenant.

19. (1) When a landlord refuses to accept any rent referred to in section 12 remitted by postal money order by a tenant in respect of any premises, the tenant shall, in the prescribed manner,—

(a) deposit such rent within a fortnight of the date on which the rent so remitted is returned to the tenant by the postal authorities as undelivered, and

(b) unless the landlord signifies by notice in writing to the tenant his willingness to accept any subsequent rent which becomes due in respect of such premises, also deposit such rent within a fortnight of the date on which such rent becomes due, or from the expiry of the time within which such rent is required to be paid under clause (a) of section 12 together with the cost of transmission by postal money order of the money deposited to the landlord.

(2) Where any *bona fide* doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any premises, the tenant,—

(a) may deposit such rent, stating the circumstances under which such deposit is made, and

(b) may continue to deposit every subsequent amount of rent which becomes due in respect of such premises, also stating the circumstances under which such deposit is made, until such doubt has been removed or such dispute has been settled by the decision of any competent Court or by settlement between the parties,

within a fortnight of the date on which such rent becomes due or from the expiry of the time within which such rent is required to be paid under clause (a), clause (b) or clause (c) of section 12, as the case may be, in the same manner as has been prescribed for the deposit of rent under sub-section (1).

(3) On any deposit being made under sub-section (1) the Controller shall within fifteen days from the date of such deposit forward the same by postal money order to the address of the landlord.

XXXVIII of 1948.]

(Chapter IV.—Deposit of rent.—Sections 20, 21.)

(4) Where any money has been deposited under clause (a) of sub-section (1) the cost of transmission thereof to the landlord by postal money order shall be recoverable from the landlord and in forwarding the money so deposited to the landlord by postal money order the Controller shall deduct therefrom such cost of such transmission and the cost of serving notice under sub-section (5).

(5) If the money sent by the Controller under sub-section (3) by postal money order to any landlord is returned undelivered, the Controller shall cause a notice of the receipt of the deposit to be served by registered post on the landlord in the prescribed manner and the amount lying in deposit may, subject to such rules as may be made under this Act, be withdrawn by the landlord on application made by him to the Controller in that behalf, and if such amount is not so withdrawn before the expiration of five years from the date of service of such notice, it shall, subject to any order of any Court, be forfeited to His Majesty, and notwithstanding anything contained in any other law for the time being in force or in any contract, the landlord shall not be entitled to recover the said amount by suit or otherwise from the tenant by way of his dues in respect of the premises on account of which such deposit was made.

(6) When a deposit has been made under sub-section (2), the amount of such deposit shall be held by the Controller pending the removal of the doubt or the settlement of the dispute which has arisen as to the person who is entitled to receive the rent either by the decision of a competent Court or by settlement between the parties and the amount of such deposit may be withdrawn by the person who is declared by such Court to be entitled to it or who is held by the Controller to be entitled to it in accordance with such settlement.

(7) No suit or other legal proceeding shall be instituted against the Crown or against any officer of the Crown in respect of anything done in good faith by the Controller receiving a deposit under this section, but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

20. If a tenant while making a deposit of any rent under section 19 wilfully gives an incorrect name or address of his landlord, he shall, on the complaint of the landlord, be liable to a fine which may extend to five hundred rupees to be imposed, after inquiry, by the Controller.

Penalty for giving incorrect name or address of the landlord.

21. When a landlord accepts rent in respect of any premises sent by postal money order by a tenant under section 12 or by the Controller under sub-section (3) of section 19 or withdraws any rent deposited under section 19, the fact of this acceptance or withdrawal shall not be used in any way as evidence that he has admitted as correct any of the

Saving as to acceptance of rent.

[West Ben. Act

*(Chapter IV.—Deposit of rent.—Chapter V.—Hotels and
Lodging Houses.—Sections 22—26.)*

particulars set forth in the postal money order form or in the application for deposit of such rent or that he has waived any notice to quit given by him to the tenant.

CHAPTER V.

HOTELS AND LODGING HOUSES.

Fixation
of fair
rate and
number of
lodgers.

22. The Controller may, on application made by any person interested,—

- (a) fix a fair rate to be charged for board, lodging or other service provided in a hotel or lodging house and in fixing such fair rate specify separately the rate for lodging, board or other service; or
- (b) fix the number of lodgers to be accommodated in each room or specified accommodation in a hotel or lodging house.

Revision of
fair rate
and num-
ber of lod-
gers.

23. The Controller may from time to time revise the fair rate or the number of lodgers fixed under section 22.

Notice of
fair rate
and
number of
lodgers to
be dis-
played.

24. The manager of a hotel or the owner of a lodging house shall, where the fair rate or the number of lodgers has been fixed under section 22 for a hotel or lodging house, display in a conspicuous part of the hotel or lodging house a notice of the fair rate and the number of lodgers so fixed.

Agree-
ment for
payment
of charges
in excess of
fair rate.

25. An agreement for the payment of any charge in excess of the fair rate referred to in section 22 shall be null and void in respect of such excess and shall be construed as if it were an agreement for the payment only of such fair rate.

No evic-
tion if
fair rate
paid.

26. No manager of a hotel or owner of a lodging house shall have any right to evict or refuse board or other service to a lodger as long as he pays or tenders payment of the fair rate fixed under section 22 and observes and performs the other conditions of the agreement in so far as they are not inconsistent with the provisions of this chapter:

Provided that a lodger shall not be entitled to the benefit of this section—

- (a) if the lodger has been guilty of conduct which is a nuisance or an annoyance to the other lodgers of the hotel or lodging house; or
- (b) if the lodger has continuously been absent from such hotel or lodging house for a period exceeding two months; or

XXXVIII of 1948.]

(Chapter V.—Hotels and Lodging Houses.—Chapter VI.—Appointment of the Controller and other officers, their powers and functions.—Sections 27, 28.)

- (c) if the lodger having contracted to stay for any specified period stays beyond that period unless the Controller on an application made to him "in this behalf extends the period.

27. (1) Every manager of a hotel or owner of a lodging house who accommodates lodgers or permits lodgers to be accommodated in a room or specified accommodation in a hotel or lodging house in excess of the number fixed by the Controller under section 22, except with the consent of all the lodgers of such room or specified accommodation, shall on conviction in a Criminal Court be punished with fine which may extend to one thousand rupees. Punish-
ment.

(2) Every manager of a hotel or owner of a lodging house who fails to display a notice as required under section 24 of the fair rate or the number of lodgers fixed under section 22 shall on conviction in a Criminal Court be punished with fine which may extend to five hundred rupees.

CHAPTER VI.

APPOINTMENT OF THE CONTROLLER AND OTHER OFFICERS, THEIR POWERS AND FUNCTIONS.

28. (1) The Provincial Government may, by notification, appoint a person to be the Controller for any area to which this Act extends to exercise the powers and discharge the duties conferred and imposed upon the Controller by or under this Act in such area. Appoint-
ment of
Controller
and Addi-
tional and
Deputy
Con-
trollers.

(2) The Provincial Government may also, by notification, appoint any person to be an Additional Controller or a Deputy Controller for any area to which this Act extends.

(3) An Additional Controller or a Deputy Controller shall exercise such of the functions of the Controller as may, subject to the control of the Provincial Government, be assigned to him by the Controller and in the discharge of these functions an Additional Controller or a Deputy Controller shall exercise the same powers and discharge the same duties as the Controller.

(4) The Controller may—

- (a) transfer any case pending before him for disposal to any Additional Controller or Deputy Controller, or
- (b) withdraw any case pending before any Additional Controller or Deputy Controller, and
 - (i) dispose of such case himself, or
 - (ii) transfer such case for disposal to any other Additional Controller or Deputy Controller.

(Chapter VI.—Appointment of the Controller and other officers, their powers and functions.—Sections 29—31.)

(5) A Controller, an Additional Controller or a Deputy Controller appointed under this section shall be either,—

(a) a member—

(i) in Calcutta, of the Judicial Branch of the Provincial Civil Service of not less than ten years' standing in such service, and

(ii) elsewhere, of the Executive or Judicial Branch of the Provincial Civil Service, or

(b) a barrister, advocate or attorney of the High Court in Calcutta of not less than ten years' standing, who has practised as such, and has experience of rent values and land acquisition cases in Calcutta.

Final
hearing
of certain
applica-
tions.

29. (1) The hearing of every application made to the Controller under this Act shall be completed within a period of three months in the case of an application for exercise of the powers conferred on him by sections 8 and 9, and within a period of one month in the case of an application for obtaining his permission under sub-section (2) of section 38, unless, for reasons to be recorded by the Controller in writing, it is not possible for him to complete the hearing within that period.

(2) The hearing of any application referred to in sub-section (1) shall, when it has begun, be continued from day to day unless, for reasons to be recorded by the Controller in writing, it is not possible so to do.

Notice to
landlords
and
tenants
before
exercising
powers
under the
Act.

30. Before exercising any of the powers conferred on him by this Act, the Controller shall give notice by registered post of his intention to do so to the landlord and to the tenant, if any, and shall cause a copy of such notice to be affixed in a conspicuous place at the office of the Controller, and shall duly consider any application received by him within the period specified in the notice from any person having any interest in the premises in respect of which such power is exercised.

Power to
enter and
inspect
premises,
to require
informa-
tion and
to summon
witnesses.

31. (1) For the purposes of any inquiry under this Act the Controller may,—

(a) enter and inspect any premises at any time between sunrise and sunset;

(b) authorise any officer subordinate to him to enter and inspect any premises; or

(c) by written order require any person to produce for his inspection such accounts, rent receipts, books

XXXVIII of 1948.]

(Chapter VI.—Appointment of the Controller and other officers, their powers and functions.—Chapter VII.—Appeal, review, jurisdiction and penalty.—Section 32.)

or other documents relevant to the inquiry, at such time and at such place, as may be specified in the order:

Provided that no premises shall be entered under clause (a) or clause (b), without the consent of the occupier, unless at least twenty-four hours' previous notice in writing has been given.

(2) The Controller shall, subject to any rules made under this Act, and, in so far as such powers are necessary for carrying out the provisions of this Act, have power to summon and enforce the attendance of witnesses, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Court by the Code of Civil Procedure, 1908.

Act V of
1908.

CHAPTER VII.

APPEAL, REVIEW, JURISDICTION AND PENALTY.

32. (1) Any person aggrieved by an order of the Controller may, within thirty days from the date of the order, present an appeal in writing,— Appeal
and
review.

(a) in respect of premises in the Presidency town of Calcutta, to the Chief Judge of the Court of Small Causes of Calcutta, and

(b) in respect of premises elsewhere, to the District Judge of the district in which the premises in respect of which such order is made are situated:

Provided that no appeal shall lie under this sub-section from any order made by the Controller under section 30:

Provided further that no appeal presented under this sub-section by a tenant shall be entertained unless all arrears of rent payable by such tenant in accordance with the order of the Controller appealed against has been paid or deposited in accordance with the provisions of this Act.

(2) The Provincial Government may, by notification, appoint any person who has exercised the powers of a District Judge in West Bengal to hear appeals presented under clause (a) of sub-section (1) to the Chief Judge of the Court of Small Causes of Calcutta and may, by notification, also appoint any person who is a judicial officer not below the rank of a Subordinate Judge to hear appeals presented under clause (b) of the said sub-section to a District Judge.

(3) The Chief Judge of the Court of Small Causes of Calcutta to whom an appeal is presented under clause (a) of sub-section (1) or a District Judge to whom an appeal is

*(Chapter VII.- Appeal, review, jurisdiction and penalty.—
Section 33.)*

presented under clause (b) of that sub-section may transfer such appeal to any person appointed to hear any such appeal under sub-section (2) and may withdraw any appeal so transferred and either hear and dispose of it himself or transfer it to any other person appointed to hear such appeals under sub-section (2).

(4) The Chief Judge or the District Judge or any person appointed under sub-section (2) to whom an appeal is transferred under sub-section (3), as the case may be, shall then send for the record of the case from the Controller and after perusing such record and, if necessary, taking such evidence himself or personally making such further inquiries as he thinks fit, shall decide the appeal and shall not send it back on remand.

(5) Subject to such rules as may be made under this Act, any order passed under this Act by the Controller, the Chief Judge of the Court of Small Causes of Calcutta or a District Judge or a person appointed under sub-section (2) may be reviewed by the person who passed the order on the ground of the discovery of any new and important matter or evidence or on account of some mistake or error apparent on the face of the record or for any other sufficient cause :

Provided that before any order is passed under this sub-section which is likely to affect any person adversely such person shall be given a reasonable opportunity of being heard.

(6) The High Court, on application made in that behalf by any person aggrieved by an order passed in appeal by the Chief Judge or the District Judge or a person appointed under sub-section (2), either imposing, or confirming any order passed by the Controller imposing, a fine under section 20, section 33 or section 34 may, where the fine is not less than five hundred rupees and such application is made within thirty days of the date of such order, call for and examine the record of such appeal and, after giving the parties an opportunity of being heard, revise the order passed in such appeal.

(7) All decisions of the Chief Judge or the District Judge or a person appointed under sub-section (2), as the case may be, shall, subject to the provisions of sub-section (6), be final.

33. (1) Whoever knowingly—

(a) receives, whether directly or indirectly, any sum on account of the rent of any premises in excess of the standard rent, or

(b) receives, whether directly or indirectly, or invites offers or asks for, any premium, *salami*, fine or any other like imposition in addition to the standard rent except as provided in section 5, or

Penalty for
recovering
rent in
excess of
the
standard
rent.

XXXVIII of 1948.]

*(Chapter VII.—Appeal, review, jurisdiction and penalty.—
Sections 34, 35.)*

(c) receives, whether directly or indirectly, any sum as rent in advance in excess of one month's rent without the written consent of the Controller,

shall, on the complaint of the party aggrieved or of the Provincial Government, be liable,—

(i) in the case referred to in clause (a), on the first occasion, to a fine which may extend to five times the amount recovered in excess of the standard rent, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to ten times the amount of such excess;

(ii) in the case referred to in clause (b) on the first occasion, to a fine which may extend to two thousand rupees, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to five thousand rupees; and

(iii) in the case referred to in clause (c), on the first occasion, to a fine which may extend to twice the amount received in excess of one month's rent, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to four times the amount so received,

to be imposed, in each case after inquiry, by the Controller.

(2) A person shall be deemed to receive a sum in excess of the standard rent, if he receives any consideration representing a money value in excess of such standard rent as part of such standard rent.

34. Whoever, in any case in which an order or decree for the recovery of possession of any premises is prohibited under section 11, without the previous written consent of the Controller, or save for the purpose of effecting repairs or complying with any municipal requisition, wilfully disturbs any easement annexed to such premises, or removes, destroys, or renders unserviceable, anything provided for permanent use therewith, or discontinues any supply or service comprised in the tenancy of such premises, shall, on the complaint of the party aggrieved, be liable, on the first occasion, to a fine which may extend to five hundred rupees, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to one thousand rupees, to be imposed, after inquiry, by the Controller.

Penalty for disturbance of easements, etc.

35. The fine imposed under section 20, section 33 or section 34 shall be paid by the person fined in the prescribed manner within thirty days from the date of the order of the Controller imposing the fine or within such further period as the Controller may allow for such payment for special

Payment and recovery of fine.

[West Ben. Act

(Chapter VII.—*Appeal, review, jurisdiction and penalty.*—
Chapter VIII.—*Miscellaneous.*—Sections 36—38.)

reasons to be recorded by him in writing and in default of such payment the fine shall be recoverable as a public demand under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
XXXVI of 1913

Limitation
for com-
plaints.

36. No complaint under section 33 or section 34 shall be brought against any person after the expiration of six months from the date of the commission of the act in respect of which the complaint is brought.

Issue of
distress
warrants
and other
processes
barred in
certain
cases.

37. No distress warrant shall be issued under Chapter VIII of the Presidency Small Cause Courts Act, 1882, and no process under the Code of Civil Procedure, 1908, in execution of a decree passed *ex parte* thereunder, shall be issued, either for the attachment of property or for the arrest of any tenant, in connection with the recovery of the rent of any premises situated in any area to which this Act may apply, unless the person applying for execution, when making his application, swears or affirms by affidavit or otherwise that none of the rent, in respect of which execution is applied for, is irrecoverable under this Act.

XV of
1882.
Act V
1908.

CHAPTER VIII.

MISCELLANEOUS.

Making of
repairs and
taking of
measures
for the
mainten-
ance of
essential
services by
the tenant
on the
failure or
neglect of
the land-
lord to do

38. (1) The Controller shall, on application made to him in this behalf by any tenant in possession of any premises, cause a notice to be served in the prescribed manner on the landlord thereof requiring him to make any repairs which such landlord is bound to make to the premises or to take any measures for the due maintenance of any essential supply or service, such as the maintenance of the supply of water or electricity, the maintenance of conservancy or sanitary service and the maintenance of any lift, which such landlord is bound to maintain in the premises under the conditions of the tenancy or according to local usage.

(2) If after the service of such notice the landlord fails to show proper cause or neglects to make within reasonable time such repairs or to take within reasonable time such measures, as the case may be, the tenant may submit to the Controller an estimate of the cost of such repairs or measures, and may apply to him for permission to make such repairs or to take such measures himself and, thereupon, the Controller may, after giving the landlord an opportunity of being heard and after considering such estimate of cost and making such inquiries as he may consider necessary, by an order in writing, permit the tenant to make such repairs or to take such measures, as the case may be, at a cost not exceeding such amount as may be specified in the order and it shall thereafter be lawful for the tenant to make such repairs or to take such measures

XXXVIII of 1948.]

(Chapter VIII.—Miscellaneous.—Sections 39, 40.)

himself and to deduct the cost thereof, which shall in no case exceed the amount so specified, from the rent or otherwise recover it from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

39. Notwithstanding anything contained in section 38, if the necessity for making any repairs or for taking any measures referred to in that section, is so urgent that any delay involved in the procedure referred to therein is likely to subject the tenant to personal loss, damage or serious inconvenience, the tenant may himself cause the notice referred to in section 38 to be served in the prescribed manner on the landlord requiring him to make such repairs or to take such measures within seventy-two hours of the service of such notice and shall in every such case submit, at the same time, a copy of such notice to the Controller together with an estimate of the cost of such repairs or measures to enable the Controller to make such inquiries as he may consider necessary about the necessity of such repairs or measures and the correctness of the estimate so submitted, and if, after the service of such notice, the landlord fails to make such repairs or to take such measures within the time mentioned in the notice, the tenant may himself make such repairs or take such measures, as the case may be, and, after completion of such repair or measures, submit to the Controller a statement of the costs thereof and thereafter the Controller, after considering such statement and making such further inquiries as he may consider necessary, may, by an order in writing, determine the amount of the costs which the tenant is entitled to recover from the landlord, and the tenant may thereupon deduct the amount so determined from the rent or otherwise recover it from the landlord:

Taking of measures by the tenant in case of emergency.

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

40. (1) Whoever knowingly accepts or obtains or attempts to accept or obtain, whether directly or indirectly, any sum or valuable thing or any pecuniary advantage on account of any premium, *salami* or fine in addition to the standard rent, except as provided in section 5, shall also, on conviction in a Criminal Court, be punished with imprisonment for a term which may extend to two years or with fine or with both and, without prejudice to any other method of recovery, the Court may order the amount paid or the value of the consideration given to be repaid to the person by whom the payment was made or the consideration given.

Criminal liability and refund of the consideration paid in addition to the standard rent.

[West Ben. Act

(Chapter VIII.—Miscellaneous.—Sections 41—45.)

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under sub-section (1) shall be cognizable and bailable. Act 1898.

Cutting of
or with-
holding
essential
supply or
service.

41. (1) No landlord either himself or through any person purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) Any landlord who contravenes the provisions of sub-section (1) shall, on conviction in a Criminal Court, be punished with imprisonment for a term which may extend to three months or with fine or with both.

Explanation.—In this section essential supply or service includes supply of water, electricity, lights in passages and on stair-cases, lifts and conservancy or sanitary service.

Tenant
may get
supply of
electricity
to the
premises
without
the
permission
of the
landlord.

42. Notwithstanding anything contained in any other law for the time being in force, a tenant may get from a licensee the supply of electricity in the premises occupied by him without the permission of the landlord.

Explanation.—In this section “licensee” has the same meaning as in clause (h) of section 2 of the Indian Electricity Act, 1910. EX of 1910

Supply of
certified
copies of
the order
of the
Controller.

43. Any person affected by any order of the Controller made under this Act shall be entitled to be furnished with a copy thereof, duly certified by the Controller to be a correct copy, on payment of such fees as may be prescribed, and such copy shall be admissible in evidence in any Court of Law to prove the order of the Controller.

Controller
to be a
public
servant.

44. A Controller appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

XLV of
1860.

Repeal and
saving.

45. (1) The West Bengal Expiring Laws Act, 1948, in so far as it enacts and continues in operation the provisions of the Calcutta Rent Ordinance, 1946, is hereby repealed.

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Act V o
1948.
Ben. Ord.
V of 1946

(2) Any rules, orders and appointments made or deemed to have been made or anything done or any action taken or any proceedings commenced or deemed to have been done, taken or commenced under any of the provisions of the said Ordinance shall continue in force in so far as they are consistent with the provisions of this Act and shall be deemed to have been made, done, taken or commenced under the corresponding provision of this Act.

(3) For the removal of doubts it is hereby declared that all proceedings pending before the Controller at the commencement of this Act in connection with applications for permission to institute or prosecute a suit or proceeding, or

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(Chapter VIII.—Miscellaneous.—Sections 46, 47.)

to execute, or proceed with the execution of, a decree or order, for the recovery of possession of any premises from a tenant and all appeals preferred against, or applications filed for review of, orders passed on such applications and pending at such commencement, shall abate.

46. No suit, prosecution or other legal proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under this Act. Bar of proceedings.

47. (1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form of permits referred to in sub-section (1) of section 6 and the fee referred to in sub-section (2) of that section;
- (b) the manner of obtaining the permission and executing an order referred to in section 15;
- (c) the manner of depositing rent under sub-section (1) of section 19;
- (d) the method of withdrawal of the deposit of rent by the landlord under sub-section (5) of section 19;
- (e) the procedure for summoning and enforcing the attendance of witnesses and compelling the production of documents referred to in sub-section (2) of section 31;
- (f) the procedure to be followed in inquiries under this Act, by the Controller, the Chief Judge of the Court of Small Causes of Calcutta, the District Judge and any person appointed under sub-section (2) of section 32;
- (g) the procedure for review of orders referred to in sub-section (6) of section 32;
- (h) the manner of payment of the fine referred to in section 35;
- (i) the manner of service of notices issued under this Act;
- (j) the charging or remitting of costs and fees and the fixing of a scale of costs and fees.

(3) All rules made under this Act shall, as soon as may be after they have come into force, be laid before the Provincial Legislature.

(The Schedule.—Part A.)

The Schedule.

[See section 2(10).]

PART A.

Provisions for determining the standard rent of premises in Calcutta.

1. In this part of this schedule “basic rent” in relation to any premises means—

- (a) where the rent of the premises has been fixed by the Controller under the Calcutta House Rent Control Order, 1943, or the Calcutta Rent Ordinance, 1946, the rent so fixed,
- (b) where the rent of the premises has not been so fixed the rent which would, in the opinion of the Controller, have been fixed under the Calcutta Rent Ordinance, 1946.

Ben. Ord.
V of 1946.

2. Where the premises are used for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

- (a) $6\frac{1}{4}$ per cent., if the basic rent *per mensem* is not more than Rs. 50,
- (b) $12\frac{1}{2}$ per cent., if the basic rent *per mensem* is more than Rs. 50 but not more than Rs. 150,
- (c) $18\frac{1}{2}$ per cent., if the basic rent *per mensem* is more than Rs. 150 but not more than Rs. 300,
- (d) 20 per cent., if the basic rent *per mensem* is more than Rs. 300.

Explanation.—In this paragraph and in the next succeeding paragraph of this part of this schedule, the expression “residential purposes” includes purposes of being used as a hospital, an orphanage, or an educational or charitable institution.

3. Where the premises are used otherwise than for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

- (a) $12\frac{1}{2}$ per cent., if the basic rent *per mensem* is not more than Rs. 75,
- (b) 25 per cent., if the basic rent *per mensem* is more than Rs. 75 but not more than Rs. 150,
- (c) $37\frac{1}{2}$ per cent., if the basic rent *per mensem* is more than Rs. 150 but not more than Rs. 300,
- (d) 40 per cent., if the basic rent *per mensem* is more than Rs. 300.

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(The Schedule.—Part B.)

4. Where any premises have been sublet, the standard rent shall be the rent determined according to paragraph 2 or 3, as the case may be, omitting the excess, if any, beyond $6\frac{1}{2}$ per cent., over the standard rent or a proportionate part thereof payable by the tenant who sublets the premises according as the premises are sublet in whole or in part.

PART B.

Provisions for determining the standard rent of premises in areas other than Calcutta.

1. In this part of this schedule "basic rent" in relation to any premises means—

(a) Where the rent of the premises has been fixed by the Controller under the Bengal House Rent Control Order, 1942, or the Calcutta Rent Ordinance, 1946, the rent so fixed.

(b) Where the rent of the premises has not been so fixed the rent which would, in the opinion of the Controller, have been fixed under the Calcutta Rent Ordinance, 1946.

2. Where the premises are used for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

(a) 10 per cent., if the basic rent *per mensem* is not more than Rs. 25,

(b) 20 per cent., if the basic rent *per mensem* is more than Rs. 25 but not more than Rs. 75,

(c) 25 per cent., if the basic rent *per mensem* is more than Rs. 75.

Explanation.—In this paragraph and in the next succeeding paragraph of this part of this schedule, the expression "residential purposes" includes purposes of being used as a hospital, an orphanage or an educational or charitable institution.

3. Where the premises are used otherwise than for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

(a) 20 per cent., if the basic rent *per mensem* is not more than Rs. 15,

(b) 40 per cent., if the basic rent *per mensem* is more than Rs. 15, but not more than Rs. 30,

(c) 50 per cent., if the basic rent *per mensem* is more than Rs. 30.

4. Where any premises have been sublet, the standard rent shall be the rent determined according to paragraph 2 or 3, as the case may be, omitting the excess, if any, beyond $6\frac{1}{2}$ per cent., over the standard rent or a proportionate part thereof payable by the tenant who sublets the premises according as the premises are sublet in whole or in part.

